

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

JOSHUA K.,

Claimant,

vs.

REGIONAL CENTER OF THE EAST  
BAY,

Service Agency.

OAH No. 2010090782

**DECISION**

Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings (OAH), heard this matter on January 18, 19, 20, 25, 26, 27 and 28, 2011, in San Leandro, California.

Ms. Louise Katz, Esq., Attorney at Law, 1100 Alma, Suite 209, Menlo Park, California 94025, represented Claimant Joshua K. (claimant or claimant Joshua K.).

Ms. Pamela Higgins, 2151 Salvio Street, Suite 365, Concord, California 94520, represented Regional Center of the East Bay (service agency).

The record was held open to afford opportunities to the parties to file written closing arguments, and if necessary, reply briefs. On March 1, 2011, OAH received from service agency "Respondent's Closing Brief,"<sup>1</sup> which was marked as exhibit "32." Also on March 1, 2011, OAH received "Claimant's Post-Hearing Brief" which was marked as exhibit "TT."

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<sup>1</sup> Claimant's 50-page Post-Hearing Brief, was accompanied by a "Table of Contents, Table of Authorities, Table of Case Authorities, Appendix A, Attachments 1, 2, 3," which are also marked as exhibit "32." Attachment 1 is the Department of Developmental Services Consumer Fact Book, Second Edition, dated August 1999. Attachment 2 is commentary regarding California Code of Regulations, title 17, section 58420 (Rate Adjustments, etc. And Attachment 3 includes pages from a Department Resource Manual regarding "person-centered individual program planning."

On March 8, 2011, OAH received “Respondent’s Reply Brief,” which was marked as exhibit “33.” And on March 8, OAH received “Claimant’s Post Hearing Opposition Respondent Brief to Respondent’s Closing Brief,” which was marked as exhibit “UU.

Because of matters in claimant’s exhibit UU that raised serious allegations pertaining to charges that claimant’s due process rights might be abridged by way of accepting certain alleged improper arguments and claimed misstatements of the evidence by service agency, as well as due to claimant’s motion to reopen the hearing, OAH dispatched on March 14, 2011, correspondence to respective counsel. That letter reopened the record for a brief period and that invited counsel to meet and confer to resolve the dispute; but, in alternate the letter asked each counsel to file memorandum regarding claimant’s charges of being a victim of procedural misconduct. On March 22, 2011, service agency filed exhibit 34. On March 29, 2011, claimant’s attorney filed “Claimant’s Response to Administrative Law Judge’s Reopening of the Record; Opposition to Service Agency Statement Regarding Procedural Misconduct; Request for Non-Noticed Issues to be Stricken from the Record. Limits on Evidence,” which was marked as exhibit “VV.” Then on March 30, 2011, claimant’s attorney filed an “Claimant’s Amendment to Response,” which was marked as exhibit “WW.”

On March 30, 2011, the parties were deemed to have submitted the matter and the record closed.

## ISSUE

When necessary services and supports are not available from resources and facilities within the State of California, must service agency pay the costs for complainant to receive appropriate and essential services and supports at an out-of-state facility known as Heartspring Center for Children With Special Needs, which is, in part, a residential treatment facility located in Wichita, Kansas?

## FACTUAL FINDINGS

### *Jurisdiction*

1. Claimant Joshua K. receives services from the service agency pursuant to the Lanterman Developmental Disabilities **Services** Act (hereinafter “the Lanterman Act”).<sup>2</sup> Claimant timely filed an appeal of service agency’s decision denying his request for out-of-state placement at Heartspring Center for Children With Special Needs (Heartspring).

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<sup>2</sup> Welfare and Institutions Code section 4500 et seq.

2. Jurisdiction for this hearing is authorized by Welfare and Institutions Code section 4700 et seq.<sup>3</sup>

*Claimant Joshua K. 's Background*

3. Claimant Joshua K. was born in Massachusetts in September 1992. When he was four months old, his parents moved to the Philippines. From about the age of two years claimant received Applied Behavior Analysis (ABA) therapy. And while living in the Philippines, claimant's mother arranged visitations for claimant with a California-based behaviorist who was employed by Behavior Intervention Association (BIA). The BIA behaviorist traveled from California to the Philippines to treat claimant and other family's child. In early 2007, when claimant was 14 years old, he returned to the United States with his mother and sister, and eventually settled in Alameda County. Also in 2007 claimant became a client of the Regional Center of the East Bay.

4. Claimant's diagnosis and eligibility for regional center services and supports, as provided through service agency, is not at issue in this case. Claimant has a diagnosis of Autism.<sup>4</sup> Also he has been diagnosed with mild/moderate Mental Retardation and Obsessive Compulsive Disorder.

Claimant has a long, troubled history that entails activities whereby he engages in unsafe behaviors. His aberrant behaviors include: swallowing inedible objects (pica); drinking unsafe liquids (dishwashing liquid and vinegar); wandering away from his home and school (elopement); trespassing onto neighbor's property; manifesting obsessive preoccupation with operating vacuum cleaners as well as ripping labels from clothing; engaging in property destruction including obsessive ripping down window blinds, exploding emotionally into tantrums, punching holes in the walls of his mother's residence and removing screens from windows on neighbors' houses; slapping and hitting his head with his hands and forearms; hitting others; and engaging other aggressive conduct towards strangers. Also in recent years, claimant's mother has begun to question her personal safety with regard to claimant's physically aggressive behaviors. And, claimant does not appreciate or understand the meaning of "personal space" for others as he "frequently bumps into people" when he travels in the general community. He has verbal delays and generally speaks in three or four word sentences.

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<sup>3</sup> All subsequent statutory references to "the Code" are to the Welfare and Institutions Code unless specified otherwise.

<sup>4</sup> Autism is a disorder with essential features that show "the presence of markedly abnormal or impaired development in social interaction and communication and a markedly restricted repertoire of activity and interests." (Section 299.00 of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revised (DSM-IV-TR).)

Despite his marked developmental disabilities, claimant has above average abilities in solving mathematics problems, especially Algebra. He enjoys computer instructional games. Claimant has excelled in a cooking class when he attended a public high school. Claimant has shown an ability to sing the words to an entire song flawlessly. And when he is exposed to routine and structured settings, which cater to his preferred activities, he has effectively executed assigned tasks.

### *Claimant's Contentions*

5. Claimant, through his mother/conservator, contends that he is afflicted with complex, severe maladaptive behaviors necessitating an intensive, consistent behavioral treatment program as well as placement in an environment that provides a 24-hour per day setting conducive with the treatment that affords him continuity between a residence and a training program. Claimant further avers that no such program has been identified for him, or that no appropriately structured program is willing to accept him as a treatment recipient, within the State of California that can adequately provide him with the scope of services and supports that the law requires. Claimant contends that Heartspring in Wichita, Kansas, has the dedicated staff personnel, detailed monitoring and setting that can afford him the supports and services designed to aid him to develop towards the goal of self-sufficiency and coaching him towards less injurious behaviors and aggressive acts against other.

### *Service agency's Evidence Was Inadequate For Sustaining Its Denial of Claimant's Request*

#### *Overview of Service Agency's Unpersuasive Evidence*

6. Service agency called seven witnesses. But the service agency's witnesses, both singly and collectively, did not provide persuasive, credible and competent evidence that service agency acted reasonably in the denial of claimant's request for his placement at a residential treatment facility known as Heartspring. The denial of the request is unreasonable, in part, because no appropriate facility was located in the State of California that was willing to accept claimant or had a program, including the availability of competent personnel, who are capable of offering complainant proper services and supports to address claimant's complex array of developmental disabilities.

#### *a. Ms. Christine Gilbert*

7. Ms. Christine Gilbert offered testimonial evidence at the hearing of this matter.

Since March 2010, Ms. Gilbert has served as service agency's case manager/service coordinator (case manager) who has been assigned to claimant's case for the relevant times pertinent to this matter.

Upon the date that Ms. Gilbert became claimant's case manager, claimant, who was then 17 years old, was not attending a school because he had been expelled or suspended from Amador Valley High School of the Pleasanton Unified School District (school district). Claimant was barred from attending the public high school because he had displayed "severe aggression," including an incident when he attacked and injured two teacher's aides. Ms. Gilbert found claimant to be restricted to a home-schooling program as funded by the school district. Also at the time, service agency funded an in-home parent-coordinated tutor program for periods occurring before and after the time funded by the school district. And service agency funded 30 hours of respite services for the benefit of claimant's mother as well as the costs of a behavioral consultant.

8. Between late March 2010 and mid-summer 2010, Ms. Gilbert was not successful in locating a satisfactory group home, which was capable and ready, to accommodate claimant's needs.

9. In pursuit of in-state services for complainant, Ms. Gilbert prepared on March 29, 2010, a statewide placement request form. The placement request form was dispatched to each of California's regional centers. On June 22, 2010, Ms. Gilbert prepared a second placement request form, which was also dispatched to every regional center.

The placement request forms set forth: "REASON FOR PLACEMENT SEARCH: Mother is *requesting residential placement* in a treatment based facility to reduce and eradicate Sib's.<sup>5</sup> Josh has been placed at home for school due to attacking two aides in the classroom." Under the form's section that seeks the provision of details, Ms. Gilbert wrote, "the behaviors are severe when they occur-hits (sic) self in the head . . . Causes bruising on the head and neck as well as bruising on the hands and wrists. [Claimant] has caused some property damage in home by putting holes in the walls . . . Mother had to seek medical attention in June 09 for stitches after incident of hitting an object." The forms went on to state: "Paragraph V. SEEKING PLACEMENTS IN: (type of facility, locale or special needs: Mother is requesting out of state placement at Heartsprings (sic) in Kansas."

When various regional centers in California did provide a response (as many regional centers did not reply), the consistent entry on the statewide placement forms' response line was: "No, we do not have an appropriate placement for this consumer." (Emphasis added.)

10. The two statewide placement request forms, which were sent to regional centers in California, establish service agency's knowledge that: (i) claimant's mother was requesting placement at Heartspring; (ii) there was no funding from the school districts for an out-of-state placement; and, (iii) service agency made no distinction regarding funding

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<sup>5</sup> Self-injurious behaviors.

one aspect of claimant's program needs versus another during the search. Accordingly, it may reasonably be inferred that when service agency used the term "residential placement," it meant claimant would reside in a "treatment based facility to reduce and eradicate SIBs" that such placement would be without funding from his local school district; and that the only source of program funds was service agency.

11. Ms. Gilbert noted that in July 2010, when no placement had been located, claimant's mother agreed to place claimant in at the New Yosemite Crisis Home at the Fred Finch Center (the Crisis Home).<sup>6</sup> In early August 2010, on behalf of service agency, Ms. Gilbert was able to secure claimant's placement at the Crisis Home. Crisis Home's plan was to provide claimant with an additional 1:1 or two aides to one consumer support "as necessary" to reach an objective of making successful claimant's transition<sup>7</sup> into a Level 4I group home for adults. Claimant was a resident at Crisis Home for approximately six weeks because he was discharged from that facility on September 16, 2010, just before his 18th birthday, because Crisis Home only serves minors. The stated purpose of claimant's placement at Crisis Home was to allow him to receive the highest level of specialized care to address claimant's maladaptive behavior, to "stabilize" him and to provide a treatment plan to transition claimant to his next placement. (But as shown by claimant's expert witnesses the work at Crisis Home was inadequate either for "stabilizing" claimant and for competent addressing his maladaptive behaviors for the consumer.)

12. Before claimant attained 18 years of age on September 18, 2010, Ms. Gilbert noted that service agency had located a newly vendorized facility called Rose's Group Garden Home No. 2 (Rose's Care Home) that was classified as a Level 4I Home. With its classification, Rose's Care Home was authorized to provide the highest level of structure and supports to serve service agency's consumers who were diagnosed with severe behaviors such as those affecting claimant. (But based on factual findings below, claimant's mother was reasonable in rejecting claimant's placement at Rose's Home.)

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<sup>6</sup> Crisis Home is a specialized residential program, which is vendorized to provide crisis stabilization and assessment to youth who have not attained the age of 18 years. It is a Level 4I home. A Level 4I home must maintain a contract with a board certified behavior analyst, who must create behavior plans and provide regular behavior consultation for the group home's administrator and its support staff as well as for the consumers residing in the group home. The Crisis Home has three resident consumers at any single time.

<sup>7</sup> At some point in the future, after claimant had supposedly moved into Rose's Care Home and following a period of observing him, the behavior analyst was to have created a behavior support plan

13. At the hearing of this matter, Ms. Gilbert was not persuasive that at this time service agency had identified or located other California-based residential “options” for claimant other than Rose’s Care Home. She alluded to having spoken with an individual regarding another facility for claimant, but Ms. Gilbert was vague and indefinite with regard to a facility that would be acceptable to address claimant’s particular circumstances.

14. Ms. Gilbert was shown to be inexperienced in acting as a case manager for an individual with as complex and profound an array of behaviors as shown by claimant. During her tenure as a case manager at service agency, she has not served a consumer who was referred to a facility such as the Crisis Home or a 4I level facility, which cares for persons with severe behavior problems.

*b. Lyndy Barnard*

15. Ms. Lyndy Barnard is the program manager/clinician for the Crisis Home. She offered testimonial evidence at the hearing of this matter. She is an associate clinical social worker, and she is registered with the Board of Behavioral Services. All of her work must be performed under the direct supervision of a licensed clinical social worker. She is advancing in her profession towards a goal of eventually acquiring licensure as a clinical social worker.

16. The Crisis Home receives funding from service agency. All clients at the Crisis Home are also consumers with service agency.

The Crisis Home serves youth, between the age of eight years and 18 years, with most consumers falling between ages of 12 years and 17 years. The objective of the Crisis Home to take “concerning behaviors” to a manageable point so that the consumer may be maintained at a “lower level” of treatment and care in order to avoid “hospitalizations.”

Service agency’s referral of consumers to the Crisis Home include contact from a case manager who dispatches to the Crisis Home an Individual Program Plan (IPP), Annual Review and a synopsis of “what going on” with the referred consumer. And twice each month, Ms. Barnard along with the Crisis Response Director of Crisis Home along with two or three managers from service agency meet as a the “Crisis Resource Team,” to discuss new referrals, ongoing concerns with resident consumers and potential new placements.

17. At the time of the proceeding, the Crisis Home had three clients residing at the facility. There are usually three staff persons present, but during a period in the late afternoon, four staff persons are present at the Crisis Home. The permitted ratio for the facility is 5:1; but, that client to staff ratio is seldom present. But during the late night (grave yard) shift the ratio may be 3:1.

18. Staff personnel are trained to draft progress notes and behavioral incident reports that record activities of customers.

19. Before claimant was admitted on August 5, 2010, as a resident at the Crisis Home, Ms. Bernard met claimant's mother, who was allowed to tour the premises that made up the group home. Claimant's mother's visit to the premises was an exception to the Crisis Home's confidentiality rule, which generally prohibits persons visiting the premises. But, Ms. Bernard acknowledged that personnel, including a behaviorist along with Rose, from Rose's Care Home, visited claimant at the premises.

20. As program manager/clinician for the Crisis Home, Ms. Barnard confirmed she requested claimant's mother to provide "a copy of a behavioral plan or some documents that show what interventions, token economy system, or reinforcements have worked or not worked with [claimant]" for review by the Crisis Home staff. And after Ms. Barnard had digested the "data," she informed claimant's mother that Crisis Home did not have a full-time professional staff member who would perform as "thorough or as in-depth" work as claimant's mother had provided claimant. Ms. Barnard asserted that claimant's mother produced "pages" of claimant's patterns for intensity of activity and a chart that documented the range and scope of claimant's aberrant behaviors.

21. At the hearing of this matter, Ms. Bernard presented a set of progress notes and behavioral incident reports that were created at the Crisis Home for claimant. Ms. Bernard also presented the Discharge Summary that she created on September 16, 2010, for claimant.

22. Ms. Barnard offered no competent evidence to support a reasonable conclusion that claimant had improved due his involvement in the program at the Crisis Home. There had been no assessment made by a competent evaluator of claimant's behaviors and adaptive functioning when he entered the program. Claimant's expert witnesses demonstrated that without a known "baseline" to establish the frequency of claimant's behaviors, it was not possible to quantify any changes for claimant by reason of the Crisis Home. The Crisis Home's admission record purportedly noted a behavior baseline; but its personnel used vague terms, such as "moderate to high," with duration of "10 minutes-2 hours" and frequency of "5-10 per week." Ms. Barnard failed to even make any reference to the behaviors she referenced in reaching a determination that claimant had improved from his 35-day residence at the Crisis Home. Ms. Barnard acknowledged that she adopted this information from her discussions with claimant's mother, rather than acquiring determination from any data collected by the Crisis Home.

Further undermining the weight and credibility of the conclusions of service agency's witnesses was the testimony of Ms. Barnard who made admissions that, (i) she is not a certified behavior analyst; (ii) she nonetheless created the behavior charts in the progress notes as a type of summary intended to cover only a few weeks; (iii) there was no baseline data to show how claimant fared during his stay at Crisis Home; (iv) no data was ever recorded because Crisis Home lacked qualified staff to perform such tasks, and;



(v) lacking data, Ms. Barnard created reports and charts using staff narratives she found in the files.

Examination of the Crisis Home documents also shows that service agency witnesses, who formed an opinion using the Discharge Summary as prepared by Ms. Barnard, did not recognize that 11 of the 20 known incident reports were disclosed by claimant's mother to the Crisis Home rather than the Crisis Home's personnel independently detecting the behaviors. Ms. Barnard testified that an incident report was to be written whenever claimant hurt himself or others or had an episode of aggression. But those records are not reliable or trustworthy in determining progress by claimant through his placement at Crisis Home. A list of the missing incident reports, and other inconsistencies such as progress reports, as provided by Ms. Barnard do not match the incident reports. The multiple incidents of self-harm and attacks against staff on August 9, 2010, are "under-reported" on the August 23 chart referenced by Ms. Davis. On August 5 claimant's head banging, hitting staff, and aggression that appear in the progress notes did not result in an incident report. On September 13 and 15, the progress notes report claimant had a "good day" without incidents; but there are incident reports for both days showing he hit himself on September 13 and hit a psychiatrist on September 15 when claimant was asked how he was feeling and replied that he was fine.

Thus, there is no basis in fact, nor any reasonable way for service agency to conclude that claimant had "progressed" from the records of the Crisis Home. By using the service agency's theory that days without incidents of maladaptive behavior equaled progress, the Discharge Summary prepared by Ms. Barnard might best be interpreted to demonstrate that claimant actually regressed while at Crisis Home. Ms. Barnard reports maladaptive behaviors *increased* during his stay because he allegedly had 12 days of 19 days in August "without incidences," but only six days out of 16 days at this same level in September.

23. Notwithstanding the foregoing, Ms. Barnard was believable when she asserted at the hearing of this matter that it will be "more difficult" for claimant if a plan for regional center-oriented supports and services is not offered through "consistency" by way of interventions and approaches implemented and executed by professional staff persons.

c. *Kent Rezowalli*

24. Mr. Kent Rezowalli offered evidence at the hearing of this matter.

Mr. Kent Rezowalli is employed by the Pleasanton Unified School District (PUSD or school district). He holds two positions. Mr. Rezowalli acts as the Senior Director of Special Education for PUSD. Also he works as the Director of the Tri-Valley SELP (Special Education Local Plan Area).

25. Mr. Rezowalli established that in 2008 claimant requested PUSD to fund his placement at Heartspring. PUSD denied the request. Again in 2010, claimant requested PUSD to fund Heartspring. And again that school district denied the request.

In September 2010, PUSD offered to fund claimant's placement at Spectrum<sup>8</sup> Center's school in Pittsburg, California. The plan was supposedly designed to address claimant's educational and behavioral needs.

26. Mr. Rezowalli was not persuasive that Spectrum Center in Pittsburg was an appropriate setting to provide claimant a program that would aid in his development towards adulthood. He offered no evidence that showed claimant's mother was reasonable in rejecting the offer of placement at Spectrum Center's Pittsburg, California.

27. Mr. Rezowalli provided no evidence to establish that service agency was reasonable in denying claimant's placement at Heartspring.

28. Mr. Rezowalli advanced at the hearing of this matter that PUSD would not contribute any measure of money to fund claimant's placement at Heartspring.

*d. Ms. Francine Davis*

29. Ms. Francine Davis offered evidence at the hearing of this matter.

30. In her employment status with service agency, Ms. Davis provides resource development for service agency. In the instance of claimant, Ms. Davis had the duty and responsibility to develop a plan for supports and service for claimant as a prospective resident at a Level 4I group home for adults. Yet Ms. Davis acknowledged at the hearing that when she conducted her survey for appropriate, fully vendorized facilities that she did not have information that claimant's mother had requested an integrated home/school program for claimant.

31. Ms. Davis was not persuasive when she asserted at the hearing that based upon documents from the Crisis Home that she reasonably could have inferred that claimant had "improved" and "made progress" from his 35-day residence at the Crisis

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<sup>8</sup> Spectrum Center schools are state-certified, non-public schools as well as public school "integrated collaborative classrooms," which provide special education (academic programs, life skills training, vocational and transitional services) to students from age five years to 22 years, who are affected by Autism, emotional disturbance, physical challenges and developmental delays. Spectrum Center schools utilize a team of educational and behavioral experts including board certified behavior analysts, credentialed teachers and teaching assistants, occupational therapists, speech pathologists, vocational coaches and classroom consultants. The Spectrum Center schools use applied behavior analysis, levels systems, discrete trial training, functional analysis assessment and behavior intervention plans.

Home. Hence she was not believable when she asserted that due to her determination regarding claimant's supposed improved status that claimant could be adequately served at Rose's Care Home. Upon cross examination, Ms. Davis made an admission she did not know that claimant was actually seeking a treatment program of integrated services between home and school. Hence her opinion, which failed to consider the proper standard of care, was given very little weight in resolving this controversy.

32. Because she did not understand claimant's treatment needs that would be uniquely served at Heartspring, Ms. Davis articulated an ill-formulated belief that in order to serve claimant Rose's Care Home would only need to follow the program model of the Crisis Home for claimant to be adequately served. Ms. Davis was not persuasive when she asserted at the hearing that Rose's Care Home could serve claimant's best interest in order to attain utmost progress by that facility's personnel's treatment course revolving around: (i) telling claimant to use "safe hands" when he tried to hit himself or others; (ii) having him take deep breaths when becoming agitated or aggressive; (iii) counting numbers to calm himself; (iv) being redirected into a padded room to hit the walls when he came overly aggressive; and (v) being rewarded when he became compliant and being punished through deprivation of desired things when non-compliant, and the like.

33. In support of her belief that claimant improved at the Crisis Home, Ms. Davis cited a small chart entitled "Behavior Report" in the August 23, 2010, Crisis Home's Dual Diagnosis Progress Report. That report purportedly showed some days when claimant showed a decreased number of episodes or, or no, maladaptive behaviors, as compared to other days. But the totality of the evidence in the record does not support Ms. Davis' theories, findings or conclusions. Instead, claimant's evidence established the ineffectiveness of what was supposed to be the highest level of care and expertise available to claimant; a program that exceeded what could be provided by a group home because it was specifically staffed and designed to address behaviors so severe that a consumer cannot function in a less restrictive setting. The Crisis Home records not only fail to establish claimant's progress, but also those documents fail to accurately record claimant's behaviors. As shown by claimant's expert witness, Ms. Davis was given reports and data that had little basis in fact. Such testimony cannot be given measurable weight that claimant can be appropriately served at Rose's Home by using a program akin to that of the Crisis Home.

34. Ms. Davis erroneously assumed that Rose's Care Home staff had taken the time, and its personnel had the skill or inclination, to investigate claimant's program at the Crisis Home before he was discharged on September 16, 2010. (On this matter, claimant's expert witness-Dr. Carina Grandison- sought to visit the Crisis Home and to ascertain the methods and successful extent of the program efforts that were being made for claimant at the Crisis Home; but she was barred from visiting Crisis Home because she was an "outside consultant" and because of that facility's rules regarding "confidentiality.")

35. Ms. Davis, who is not trained in assessing behavioral maladies or treating of autism, never met claimant. Her involvement in this matter was to assist in locating resources rather than evaluating programs or treatment needs. Ms. Davis could not name anything to support the belief there was “improvement” by claimant at the Crisis Home. Hence, Ms. Davis’s recommendation that Rose’s Care Home was a suitable placement for claimant was not persuasive.

36. By the weight of evidence provided by claimant’s expert witnesses, it was not reasonable to conclude as posited by Ms. Davis that Rose’s Care Home could successfully use the Crisis Home as a model to treat claimant. That Level 4I adult facility personnel neither understood nor knew the extent of services given claimant at Crisis Home. No evidence established that Rose’s Care Home’s administrator/owner’s intention to emulate any aspect of the program/interventions at Crisis Home, even if there had been measureable improvement from the 35-day stay by claimant at Crisis Home. And the evidence showed that during two visits to Crisis Home, Rose’s Care Home’s Administrator, a staff person and later the Behavior Consultant for Rose’s Home merely met claimant at the park, observed him playing with a puzzle at the Crisis Home and attempted to converse with him with little success.

*e. Wei He Huang, Ph.D., BCBA-D.*

37. Wei He Huang, Ph.D. offered testimonial evidence on behalf of the service agency’s determination to deny complainant’s request for placement at Heartspring.

38. Dr. Huang has been a behavior analyst with service agency. Dr. Huang holds a PH.D. in philosophy, a Masters of Science degree in Behavior Analysis and Therapy, and a Rh.D. (Doctor of Rehabilitation) from Southern Illinois University . The professional designated “BCBA-D” connotes “board certified behavior analyst at the doctoral level.”

Service agency has employed Dr. Huang since June 1998. From June 1998 through June 2006, Dr. Huang worked as a case manager for service agency’s Children and Transition Unit. From June 2006 to November 2007, he was a supervisor in service agency’s Early Intervention and Young Children’s unit. And from November 2007 until the present time he has been a supervisor in Young Children and Adolescents unit of service agency.

39. Dr. Huang first reviewed claimant’s file only a week before the hearing of this matter. The service agency’s behavior analyst had no other involvement with the placement decision. Also the service agency’s behavior analyst made only a brief visit to Rose’s Care Home a few days before the hearing on this controversy. At Rose’s Care Home, Dr. Huang found a single, non-autistic client in residence. Hence from his visit to Rose’s Care Home, Dr. Huang could offer no evidence regarding any program or services pertinent to claimant’s complex array of troubled behaviors that could be offered through Rose’s Care Home.

40. Dr. Huang was not persuasive that complainant showed some improvement by way of his 35-day residence at the Crisis Home. Dr Huang only cited a single data point entry on a chart titled “Incidents Include[ing] Head banging, Hitting Others and Property Destruction.” Service agency’s behavior analyst was not believable when he asserted at the hearing that when the chart showed claimant had had a day without maladaptive behaviors, such entry indicated good progress. Dr. Huang’s opinion was faulty in that the document cited by him as a document from Crisis Home data was a data sheet summarizing the 39 pages of information as prepared by claimant’s mother months before claimant entered the Crisis Home. And Dr. Huang could not refute complainant’s evidence that the record regarding claimant having a day without exhibiting maladaptive behaviors merely reflected one point in a cycle where claimant did not exhibit aberrant behaviors; and that, such day devoid of maladaptive behavior established nothing more. The evidence from Dr. Huang cannot be given weight on the issues of claimant’s progress through the Crisis Center and his need for a specific level of services.

41. In assessing claimant’s situation, Dr. Huang never had any contact with Ms. Bernard, the Crisis Home’s program manager, while claimant was a resident at Crisis Center. And service agency’s behavior analyst never visited claimant while the consumer spent 35 days at Crisis Home.

42. Dr. Huang had no meaningful interaction with Ms. Gilbert, who served as claimant’s case manager. And his contact with the case management supervisor, Ms. Limato, involved only the exchange of email messages with regard to claimant’s petition that service agency provide the consumer with legally adequate supports and services in the way of proper placement in a residential facility.

43. Dr. Huang only learned in January 2011 that Rose’s Care Home had agreed to accept claimant as a resident in that Level 4I facility.

44. During his survey of facts in this matter, Dr. Huang gathered no information from personnel at Heartspring to learn about the details of the services and supports offered at that out-of-state facility. He did not know about the living arrangements that are prescribed at Heartspring. He acknowledged that Heartspring could meet the definition of a “natural environment” within the meaning of the Lanterman Act.

45. Dr. Huang was not persuasive when he asserted that the distance of Heartspring from his mother’s residence made inadequate that Wichita, Kansas facility. Dr. Huang did not know the schedule established by Heartspring in devising measures for communication between its residents and their parents/conservators. Service agency’s behavior analyst did not know the plans of claimant’s mother to visit or to interact with claimant upon being in residence at Heartspring. And Dr. Huang did not possess information regarding the geographic regions from which children are enrolled at Heartspring.

*f. John Edward Rodriguez*

46. Mr. John Edward Rodriguez offered testimonial evidence on behalf of service agency. He is the Associate Director for Consumer Services within the structure of service agency. Mr. Rodriguez has been employed by service agency since August 1977.

Mr. Rodriguez was called to provide testimony regarding service agency's policy directives as to placement procedures that supported the determination to deny claimant's out-of-state placement at Heartspring. But he was not persuasive that a reasonable basis existed for service agency to deny claimant's request for out-of-state placement when measured against the facts as developed at the hearing of this matter. Mr. Rodriguez, however, did establish that there was no available Level 4I facility in service agency's "catchment area" that could provide claimant with the level of treatment sought by claimant. He noted that Regional Projects elsewhere in California refused to respond to service agency's requests for placement of claimant.

47. Mr. Rodriguez was neither persuasive nor credible in critical aspects of his testimonial evidence at the hearing of this matter.

Mr. Rodriguez asserted that service agency had no reason to conclude that claimant's pattern of aberrant behaviors required a 24-7 treatment program that would integrate treatment, a residential setting and a training program.

Mr. Rodriguez was not believable when he asserted that service agency would not endorse Heartspring because, in his opinion<sup>9</sup>, that facility was inappropriate for a consumer in a setting because it is an institution with more than 15 beds.

Mr. Rodriguez demonstrated that he lacked awareness of Heartspring. He proclaimed that he perceived Heartspring as being a large institution that was "segregated" from the general community. Claimant's expert witness, Dr. Piersel, the director of psychology at Heartspring, noted that Heartspring has an open model with pathways through the campus, which are traveled by non-disabled residents of apartment buildings that surround Heartspring.

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<sup>9</sup> The testimony by Mr. Rodriguez was solely opinion, without the controlling authority to support such a rigid dictate so as to be binding relative to claimant's placement at Heartspring. There is no evidence in the record that Heartspring is (a) is a California state licensed care facility subject to this contingency, as it is located in Kansas, (b) a facility which must present plans to the regional center to downsize by 2012, or (c) a facility to which this section is applicable, as it makes no mention of out-of-state facilities nor the specialized treatment provided.

48. Mr. Rodriguez's testimony was not compelling that service agency had ample proof to establish that Rose's Care Home has fully trained staff day-to-day staff, a readily available behaviorist and a thoroughly prepared treatment program that could adequately meet claimant's needs within the meaning of the Lanterman Act. Without production of a resume, Mr. Rodriguez was not persuasive that the owner/administrator of Rose's Care Home was experienced in serving individuals similar to claimant who have not only Autism but also are afflicted with profound maladaptive behaviors that involve aggression towards others and self-injurious conduct. The positions advanced by Mr. Rodriguez regarding the appropriateness of Rose's Care Home for claimant's treatment and development were fully debunked by claimant's expert witnesses as well as by claimant's mother's credible, compelling and persuasive evidence.

*g. Ms. Kimberly Limato*

49. Ms. Kimberly Limato offered testimonial evidence at the hearing. She is service agency's case management supervisor who is assigned to claimant's case.

50. As long ago as September 2008, Ms. Limato, on behalf of service agency, has exerted efforts in the conduct of statewide searches for residential facilities for treatment of claimant's severe aberrant behaviors.

51. Ms. Limato prompted service agency to procure a Department "Community Integration Assessment." On April 5, 2010, Community Program Specialist II Jesus Gomez prepared the assessment report that is authorized by Welfare and Institution Code section 4418.7. The assessment's purpose was to determine claimant's "appropriateness for an alternative living arrangement." The community integration assessment report by Mr. Gomez included, among other things:

Although [claimant] displays very challenging behaviors, he is not in eminent danger of admission to a state developmental center or a children's crisis home. [Claimant] appears to be [responsive], at times, to the behavior intervention programs that has been implemented

. . . . Every effort needs to be made to stabilize his living arrangement . . . so that he can develop to his full potential and feel safe in a structured setting and routine. . . . At this time, the family acknowledges that they no longer have the capacity to meet [claimant's] needs on a daily basis. *He needs a living arrangement that provides a strong behavioral component* with opportunities to [support] his preferred activities. This will ensure his progress in acquiring the skills necessary to live an independent and productive life. (Emphasis added.)

Ms. Limato and other service agency's personnel's reliance on the report by Mr. Gomez was not persuasive for the proposition that claimant did not require a school and/or training site "within the residential facility or residential setting, as per evidence that claimant with a good and comprehensive plan, can function at home and at school."

52. Notwithstanding the commentary within the community integration Assessment report authored by Mr. Gomez,<sup>10</sup> and as noted above, due to complainant's

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<sup>10</sup> At hearing there was a lengthy discussion about the multiple inaccuracies of claimant's Community Integration Assessment by Mr. Gomez. A stipulation was accepted by the parties at the hearing of this matter whereby Exhibit OO, dated May 13, 2010, was recognized as the last revised edition of the report by Mr. Gomez. The stipulation embraced an agreement that corrections were made to the report by the IEP team that included the service agency's personnel. The corrections appear in the record as Exhibit BB. But service agency persisted in advancing the language that states "Additionally, it appears as if claimant's mother has been unwilling to work within the options available to try to make them work, giving claimant the option to succeed or fail in a local residential setting." This sentence was removed from Mr. Gomez's report by the IEP team due to its inaccuracy. The IEP stated that regarding paragraph F, "*Regional Center agreed to omit statements.*"

Claimant's mother's e-mail query to Mr. Gomez points out nothing had been rejected and that for "fairness and accuracy" she requested he specify what "options" he was referring to. The stipulation stated that while Mr. Gomez corrected multiple inaccuracies as set forth Exhibit BB, he failed to make the change to item F, but also did not justify its inclusion. The testimony established Mr. Gomez said it could not be changed on the basis it had already been "sent in."

Service agency's allegation that claimant's mother simply "dismissed" Rose's Care Home as an option is contradicted by the substantial weight of the record, which establishes the exhaustive efforts of claimant's mother to investigate Rose's Care Home, including approximately two months investigating Rose's Care Home's program and staffing; consulting with the Behavior Consultant, Dr. Colon, and Dr. Vela, the head of the agency which employs Dr. Colon; and having Dr. Grandison visit the Home to confer with the owner/administrator and with Dr. Colon, before making a decision.

Service agency cites the recommendation of Mr. Gomez for the proposition that claimant be served at Rose's Care Home, when his recommendation was specifically conditioned upon a history and resources that did not exist at the time and do not exist now. In the IPP, dated March 26, 2008, when claimant was enrolled at the Spectrum Center school, claimant "frequently endangers himself by eloping, ingesting non-edible objects . . . He also has severe impulsivity to destroy property and disassemble fixtures. These behaviors occur during *structured and unstructured times of the day and evening . . . . These problems do not only occur at home, they have been frequently documented in school reports.* Due to the danger claimant poses to himself, his environment, and others, a highly structured program and close supervision are needed at home and at school. Due to his diagnosis of Autism, claimant's program design should be communicated, implemented, and monitored consistently in both environments." (Emphasis added.)

The record established that claimant's pica improved due to the collaborative efforts of claimant's mother and the classroom teacher by making sure claimant had a small bag to



objection at the hearing of this matter that writing constitutes administrative hearsay<sup>11</sup>. That report<sup>12</sup> was received only to supplement and explain the testimony by Ms. Limato. But of

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collect objects rather than ingest them. The report does not explain why, if claimant was doing well enough for the IEP team to transition him to Amador High School, he regressed, or how placing him back in Spectrum would alter this state of regression. That is the issue that has brought him to Heartspring. Mr. Gomez found nothing in the special education settings at Spectrum that were different from Amador. The pronouncement of “more structure” is meaningless without some explanation of what that structure would be.

More importantly, Mr. Gomez does not support the service agency’s IPP that determined long ago that Claimant requires a consistent program “across school and residential environments.” The evidence in the record of this matter showed that neither the local school, nor Rose’s Care Home, had the expertise, program design, or authority, to make this happen. The report of Mr. Gomez is given no weight on the issue of whether claimant should be placed at Heartspring.

<sup>11</sup> Government Code section 11513, subdivision(d).

<sup>12</sup> As noted above the report by Mr. Gomez constitutes administrative hearsay. The report was unsupported by any testimony by Mr. Gomez, or any other Department employee having insight into the report’s creation, and the report was not relied upon by any expert witness in formulating an opinion at the hearing. There was no evidence in the record that Mr. Gomez had any expertise or training in the treatment of individuals afflicted with Autism or other severe behavioral deficits. Service agency presented no evidence that Mr. Gomez had any qualifications in the area of education, or program design or implementation for individuals with Autism. There was no evidence in the report that Mr. Gomez knew anything about Heartspring, special education programs, or the schools where claimant had been placed. Mr. Gomez’s report preceded service agency’s consideration of Rose’s Care Home. And the report did not, on its face, address the issue of whether Rose’s Care Home could meet claimant’s needs or how that proposed Level 4I would do so.

Mr. Gomez assessed claimant by considering only a few of his extensive list of maladaptive behaviors and then that Department employee created his own rating, yet imprecise, system for these behaviors. For example, Mr. Gomez considered head banging that resulted in blood on the walls to merit a 10. Such 10 score for blood-drawing head banging then lessened the seriousness of claimant’s behavior because he hit his head with his hands and forearms. Severity, frequency did not count on the scale. Nor under Mr. Gomez’s scale was there any known effort to quantify claimant’s aggression towards others, or the effectiveness of prior programs, among other issues. At the time of Mr. Gomez’s report, not a single care home had accepted claimant as a client. The assessment report did not recommend that claimant be placed at Crisis Home.

Mr. Gomez’s report unpersuasively noted Spectrum Center School (Spectrum), which was the school where complainant attended prior to his enrollment at Amador High School,

importance is that Mr. Gomez conducted his assessment in March 2010 and wrote his report in April 2010, which was a time after claimant had been dismissed from Amador High School for violence against the staff; yet, before the date of the evaluation of claimant's expert Dr. Grandison. There was no comprehensive evaluation of claimant at that time because the Autism Clinic had rejected the request of claimant's mother, who then turned to claimant's expert witness, Dr. Carina Grandison, whose report was issued in July 2010.

53. When the statewide placement request forms produced no facility in California that would accept claimant, Ms. Limato and other personnel with service agency exerted efforts to cause Rose's Home to become "vendorized" and to accept respondent. But before Rose Home was located and prompted to accept claimant, with conditions and limitations, Ms. Limato was aware that the Crisis Home had been claimant's residence from August 7, 2010 to September 16, 2010. The purpose of claimant's stay at Crisis Home was to provide claimant with the highest level of care available to address his increasingly extreme maladaptive behaviors, which was described by Ms. Limato as a "bomb ready to go off." And the Crisis Home was designed to stabilize claimant such that he could transition to an out-of-home placement. Claimant's discharge date from the Crisis Home was determined not by the conclusion of any treatment or his successful progress through a treatment regimen, but because he had reached his 18th birthday and the Crisis Home may only serve minors.

54. On September 10, 2010, Ms. Limato sent a letter that denied the request that service agency assume responsibility for claimant's placement at Heartspring. The letter stated, in pertinent part:

After reviewing behavioral data, screening of DVD's of Joshua's behaviors, meeting Joshua, conducting interviews with direct care and consultative staff, and consulting with [Pleasanton Unified School District (PUSD)], [service agency] has identified a residential placement for Joshua in Contra Costa County. [Service agency] feels this residential placement will meet his behavioral, health, recreation and specialized needs.

This residential option is a new home where Joshua will have his own room. The vendor who has agreed to work with Joshua is an experienced vendor who has worked with a variety of individuals with developmental disabilities including those

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and where claimant had supposedly functioned well. Mr. Gomez opined that claimant's behaviors had increased due to his removal from a structured environment "where he was beginning to thrive." But the report authored by Mr. Gomez is not only so vague as to be irrelevant to this case, but also the writing fails to acknowledge, and wholly contradicts, the service agency's own IPP reports for the period during which claimant attended Spectrum, which was the institution Mr. Gomez believed would solve claimant's problems if he were allowed to return. And the report cannot be viewed to rest upon any fact establishing that claimant ever "thrived" at either the Crisis Home or Spectrum.

with Autism. The new home is a level 4I that will be fully staffed by the time Joshua exits and is discharged from the New Yosemite Crisis Home on September 16, 2010. [Service agency] will provide the residential home with an Additional Staff Person (ASD) for Joshua and the delineation of this service will continue until the Interdisciplinary Team (ID) agrees that this specialized service is no longer needed. Service agency will also provide additional behavioral services, both direct and consultative, to Joshua and the residential home. This service will occur as determined by the ID team. . . . Service agency staff and their vendorized consultants will work directly with the identified local school district in order to assist with consistency and transparency between the school district, the group home staff, and [service agency]. As discussed in our last meeting dated September 7, 2010, PUSD staff will assist you in finding an appropriate educational setting that best meets Joshua's needs. Again, [service agency] will provide consultation to this local district to ensure consistency between the group home and the educational setting on behalf of Josh.

Therefore, [service agency] is denying your request for out of state placement to Heartspring in Kansas because there is a local residential placement appropriate and available for Joshua [K.].

Ms. Limato's letter was not grounded upon adequate and reasonable analysis of the facts pertaining to claimant.

55. Ms. Limato was not persuasive at the hearing when she asserted that service agency had formulated "proposed ideas" for prospective implementation of a scheme that would allow claimant to make a smooth transition from Crisis Home to a Level 4I group home for adult men. Service agency, according to Ms. Limato, contemplated enhanced staffing, including assigning claimant with a dedicated person who would provide supports to claimant due to specialized training of the dedicated person in methods of delivering a consistent behavior program for usage in a group home residence and a school setting. But Ms. Limato was not credible that service agency has the inclination to assure unbroken consistency between a residential setting and educational environment. Ms. Limato offered no competent evidence that service agency has devised a concrete plan to bestow consistency in the provision of services to claimant through coordination. The plan outlined by Ms. Limato was shown to be vacuous when the case management supervisor acknowledged that claimant's mother/conservator would be required to have an integral role in the arrangement. Under service agency's proposal, claimant's mother/conservator would be required to exercise authority to "sign off" on the regional center's IPP, the school district's IEP and the group home's program plan. Ms. Limato noted that should claimant's mother/conservator could reject a portion of any aspect of the contemplated "integrated" set of plans, and in such an event claimant's mother/conservator would have the opportunity to "discuss" problems and could assist the planning team's formulation of "new goals and objectives."

56. Ms. Limato was not believable when she posited service agency's understanding of "strong behavioral components," within the meaning of the Community Integration Assessment's recommendation that under service agency's plan claimant could be afforded "opportunities to learn preferred activities and appropriate behaviors . . . in developing independence." Service agency's case management supervisor unconvincingly emphasized that "strong behavioral component" meant merely access and use by complainant to "behavioral consultations" that is provided through his residence in a Level 4I group home. The case management supervisor noted that a behavioral consultant would be an entity (corporation) or person hired by the group home. And that the consultant would train group home staff on specific behavioral interventions upon claimant while he is a resident in the group home. Ms. Limato stated that the behavior consultant would effect oversight of activities in the group home. And according to Ms. Limato the proposed consultant would perform adequate behavior analysis on the group home consumers, such as claimant.

57. Ms. Limato unpersuasively indicated that service agency had approved Rose's Care Home contracting with the corporate behavioral consultant firm known as Understanding Behavior Incorporated (UBI). Through UBI, Rose's Care Home was to work with Dr. Marilyn Colon. But Ms. Limato was vague and unspecific regarding the number of hours that would have been authorized for payment by service agency for Rose's Care Home to retain UBI or Dr. Colon to serve claimant's needs.

On the question of the scope of services to be offered by the contemplated behaviorist in serving claimant, Ms. Limato deferred to service agency's resource and development team as led by Ms. Francine Davis. But Ms. Limato acknowledged that service agency does not "live in the day-to-day functioning of the consumer or oversee the day-to-day intervention of the behaviorist."

58. In addition to Rose's Care Home's lacking both a program, and professionally supervised competently trained staff along with timely oversight mechanism by a full-time behavior consultant, service agency's offer to complainant of "additional support" in the form of a 1:1 aide at Rose's Care Home was only for a "limited time." Ms. Limato testified that service agency's ID Team, including Regional Center people who would not be part of his care team, would make the decisions about claimant's program specifics, including how long the 1:1 aide would continue to be assigned to his case. When asked when this committee would meet, the response was "when we have time," rather than when claimant's needs dictate.

But with regard to the foregoing, claimant's expert witnesses thoroughly debunked the assertions by Ms. Limato that Rose's Care Home had the capability of a program or the competency of staff personnel to provide adequate and proper treatment to claimant.

59. Ms. Limato as well as Ms. Gilbert for service agency, along with the documents of record, indicate that although group homes were located during the course of the statewide placement search, none of those facilities accepted claimant as a client

*Dispositive Findings regarding Service Agency's Evidence*

60. The records upon which service agency's witnesses relied were incomplete, inconsistent and misleading.

Claimant's supposed progress through his 35 day enrollment at Crisis Home was not persuasively established as showing his progress through the techniques used at Crisis Home. As shown by claimant's expert witnesses, and especially by Dr. Carina Grandison, claimant's level of need cannot be quantified by which actions he exhibited on certain days. The basis for a treatment program cannot be relied because of the inexact data indicated in discharge records of Crisis Home; rather, the undisputed record pertaining to claimant's maladaptive behaviors showed that he is prevented from functioning across environments, such as between Crisis Home and Rose's Care Home. As shown by Dr. Grandison, when claimant's maladaptive behaviors occur, his conduct is so severe and pervasive that he and those around him are not safe, whether at home, school or in the community.

Nor could Rose's Care Home have prepared a program to serve claimant by reading and digesting the record by Crisis Home. Ms. Barnard established that the progress notes, which are the detailed record of the staff's day-to-day efforts, are not transmitted to anyone; however, she made an exception in the case of this hearing and she provided service agency with a selection of the existing documents. Thus, not only did the record for the hearing in this matter lack evidence that Rose's Care Home would have been able to model a program on the methods used at the Crisis Home, there was no evidence Rose's Care Home staff took the time, nor had the skill or inclination, to investigate claimant's program at the Crisis Home before he was discharged from that youth group home on September 16, 2010.

The service agency argued claimant could be served locally because service agency personnel would "advocate" for claimant in order to assure that his needs were met. But on August 12, 2010, which was barely a week into his stay at Crisis Center, Ms. Gilbert was informed by Crisis Home that claimant's expert witness-Dr. Carina Grandison was being denied access to claimant while he was in residence at the Crisis Home. Yet, no one within service agency's staff advocated for access by the clinical psychologist in this matter. And the service agency detected no inconsistency in Ms. Barnard's policy when she allowed visits by Rose's Care Home staff, the facility behavior consultant, school district personnel and even Ms. Gilbert, who met claimant for the first time at the Crisis Home; yet barred Dr. Grandison's access to claimant when he resided at Crisis Home. Despite having her report already in its records, service agency failed to advocate for a comprehensive evaluation by Dr. Grandison, but rather service agency's personnel passively accepted Crisis Home's determination that Dr. Grandison as an "outsider," could not gain entry to its facility to interact with claimant.

Service agency's personnel, in relying upon input from Rose's Care Home and its behavior consultant, made admissions that they cannot or will not provide individualized service in the form of appropriate treatment required by claimant. Each of service agency and its affiliates in this matter expects the other, or claimant's mother, to create and carry out a plan of treatment for claimant and to ensure consistency between home and school. Yet the evidence did not show that such consistency for the provision of services could be accomplished by Rose's Care Home for the behalf of complainant.

*Claimant's Evidence that Shows the Reasonableness of His Appeal against the Service agency's Denial of His Out-of-State Placement at Heartspring*

61. In addition to testimony from claimant's mother, claimant Joshua K. called three witnesses to the hearing of this matter.

*a. Lauren C. Wasano*

62. Ms. Lauren C. Wasano, M.A., B.C.S.A, offered persuasive and compelling expert witness testimonial evidence at the hearing of this matter.

Ms. Wasano is a board certified behavior analyst.

63. Ms. Wasano is employed by STE Consultants of Berkeley, California. She provides behavioral intervention and consultative services, both in home settings and in schools. Her work entails performing behavioral assessments, conducting treatment team meetings and training staff personnel on various issues pertaining to behavior intervention for persons similarly disabled as claimant.

64. In approximately early 2008, Ms. Wasano first met claimant. She came into contact with claimant through a contract offered by service agency. The contract called for Ms. Wasano to use behavior analyst techniques to reduce claimant's aberrant behavior known as pica. In the instance of claimant at the time Ms. Wasano began her work with him, claimant's pica involved him swallowing screws, paperclips, parts of writing pens, small magnets, small batteries and various unappealing liquids such as vinegar. Through her data collection and analysis, Ms. Wasano formed a set of theories to account for claimant's pica activities. Over time, by way of one-on-one interactive sessions with claimant, Ms. Wasano was able to bring the pica activity to a markedly reduced level.

In February 2010, PUSD retained Ms. Wasano to perform a functional behavior assessment with regard to self-injurious behavior (head hitting) and aggression towards others by claimant when he was a student at Amador High School. But Ms. Wasano did not complete the assessment because only after she had observed claimant on a single occasion the school district suspended claimant when he attacked and injured a teacher's aide.

Following his suspension from Amador High School, and after March 2010, service agency hired Ms. Wasano to perform an in-home assessment for claimant. She worked as a consultant for claimant through two funded periods with the final period running from approximately June 2010 until August 2010. The service agency sought Ms. Wasano to provide consultative behavior management services to claimant's family. Ms. Wasano followed claimant for a number of months that ended in August 2010 when he entered the Crisis Home. She observed that although claimant remained at his mother's residence, he needed intensive supervision. In addition to her work as a behaviorist, Ms. Wasano noted that claimant's behaviors increased in intensity despite the assistance provided by no less than two male "tutors" every day until 7:00 p.m. Through her weekly visits with claimant as well as by way of her review of data collection by claimant's mother and others, Ms. Wasano determined that claimant required "two adults at a time" to manage him because he kicked at others, hit himself or punched walls.

65. Ms. Wasano credibly conveyed that service agency had incorrectly stated that her work with claimant fell within an "Intensive Behavioral and Social Skills (IBBS)" program that began in December 2007. Rather Ms. Wasano showed that the truth was that in February 2008 she began the provision of services in accordance with a "parent-training" model, which was not as in depth as service agency suggested. Under her actual provision of services, Ms. Wasano met with claimant's mother and in-house caregivers two or three times each month. The meetings revolved around discussions as to "how to best address [claimant's] pica and other inappropriate behaviors." But such training under the "parent-training" model involved implementation of the program that is not supervised and monitored on a day-to-day basis.

Ms. Wasano emphasized that her employer-STE, "does not get involved with school" and that she does not communicate with school behaviorist. The scope of her work only involved consultation with parents and caregivers at home.

66. Ms. Wasano established that no service agency employee, who offered evidence at the hearing, demonstrated an understanding that the Crisis Home had adopted or followed the behavior program devised by Ms. Wasano in serving claimant. But Ms. Wasano acknowledged that her plan had *not* successfully addressed most of Claimant's maladaptive behaviors. Ms. Wasano's written reports and her testimony at the hearing of this matter established that even though claimant had been exposed to and he had used strategies such as deep breathing, scripted responses, labeling emotions, punching bags, re-direction, walks, puzzles, and a timer, which she had utilized during the course of providing services to claimant, he nevertheless was afflicted with ever worsening aberrant behaviors, in addition to pica.

67. Ms. Wasano expressed her expert opinion that claimant did not progress through either claimant's residence at the Crisis Home in August 2010 or through claimant's exposed to the behavior services offered by Ms. Wasano on a weekly basis before he went into the Crisis Home. After claimant was released from Crisis Home, service agency did not offer to compensate Ms. Wasano for her continued provision of behaviorist services.

As of the time of the hearing in this matter, Ms. Wasano continued to provide behavior services to claimant through a contract with PUSD. From September 2010 her services have been funded by the school district for her work. The school district pays her for only three hours each week. Ms. Wasano provides ongoing behavior supports to three or four individuals who act as aides or tutors to claimant. Although the school district pays for the work of about five individuals, including Ms. Wasano, the school district has not funded a full-time teacher to serve claimant's needs.

68. Ms. Wasano provided credible evidence to establish that claimant had *not* "improved" as a result of the placement at, or program by, the Crisis Home. Ms. Wasano had contact with claimant that occurred before and after the period that he resided at the Crisis Home. She thoroughly incorporated records assembled by claimant's mother and used her experience and knowledge to show claimant continued "to display aberrant behaviors (i.e., head hitting, aggression) similar in expansiveness and intensity as he had prior to going to the [C]risis [H]ome."

*b. Carina M. Grandison, Ph.D.*

69. As his expert witness at the hearing of this matter, Claimant called Carina M. Grandison, Ph.D.

In 1992 Dr. Grandison received a Ph.D. degree in Developmental Psychology, which a specialization in neuropsychology. She had begun intensive work in developmental disabilities in 1990. She fulfilled a post-doctoral fellowship in Clinical Neuropsychology in 1993. From 1994 through 2003, Dr. Grandison held various positions including: Clinical Instructor at the Harvard Medical School's Department of Psychiatry; Developmental Neuropsychologist at the University of California, San Francisco, Department of Psychiatry's Infant-Parent Program; Assistant Clinical Professor, Department of Psychiatry, University of California, San Francisco; Pediatric Neuropsychologist and Training Coordinator, Neuropsychology Assessment Services, Children's Hospital (Oakland); and Director, Neuropsychology Assessment Services, Children's Hospital (Oakland).

Dr. Grandison is licensed to practice clinical psychology in states of California and Massachusetts. She moved to California in 1996, and became licensed in this state in 1996.

Since about 2006, in addition to remaining as Assistant Clinical Professor at UCSF, Dr. Grandison has been in a private practice that consists of performing assessments of young people of all ages who are suspected of being afflicted with developmental disabilities, including Autism.

Dr. Grandison, a developmental neuropsychologist, is an expert in Autism who has evaluated thousands of individuals for autism spectrum disorders and she has experience with residential and educational placement issues for autistic individuals.



70. When the Autism Clinic refused to serve claimant or to evaluate his treatment needs in mid-2010, claimant's mother sought help from Dr. Grandison.

71. Beginning on in early July 2010, Dr. Grandison conducted a thorough evaluation of claimant. She observed claimant on July 8, 9, 13 and 15, 2010, which included two separate two and one-half-hour to three-hour long sessions in her office.

Dr. Grandison was compelling at the hearing of this matter when she asserted that her evaluation of the consumer revealed claimant's intellectual ability and adaptive functioning to be actually more complex than the label of "mental retardation" as previously given.

The clinical psychologist determined that complainant's maladaptive behaviors are extremely severe. Dr. Grandison opined that out of the thousands of individuals whom she had met, assessed or treated, claimant's level of self-injurious behavior along his propensity to damage property and to injure others places him in the "very severe" range of Autism in that he is in the "top tier" of having difficult, dangerous behaviors.

Dr. Grandison determined that claimant has a low average non-verbal IQ; but he is severely impaired in the areas of communication due to language impairment affecting expression and thought. But claimant's abilities in the areas of mathematics were very strong, and "at a level commensurate with end of high school abilities" as shown by his ability to perform advanced mathematics calculations including algebra. Further claimant "demonstrates very strong visual processing abilities. He understands visual information such as geometric patterns and matrices that meets age expectations. This is an astonishing finding in contrast to his very deficient language skills."

Claimant's adaptive functioning is high in that he can cook a simple meal, set the table, clean up, do the dishes; dress and care for his hygiene, which Dr. Grandison characterized as "procedural skills." Dr. Grandison was impressed with claimant's ability to do so many kitchen/cooking related chores. Yet at the same time as performing cooking functions well, claimant could show overly obsessive fixation with certain gadgets in a kitchen so that his accomplishments are overshadowed.

But claimant cannot "organize himself around activities" or independently make use of unstructured time by reading, watching television or playing games, although he will do algebra obsessively. His attention span during unstructured periods is measured by mere minutes. During "idle time" he may become impulsive and destroy things around him. He cannot communicate his needs verbally.

Dr. Grandison's evaluation including her watching of DVD videos taken of claimant by his mother wherein claimant cried out in pain from hitting himself yet he continued to hit himself. When begging his mother to stop him, claimant hit out at her. Dr. Grandison portrayed the DVDs are depicting nightmarish scenes, which included

claimant's primal screams while hitting himself very hard that resulted in blood flow and "self damage."

Dr. Grandison determined that claimant is not easily redirected and his mood escalates quickly to physical violence against himself (punching his head with his hand/fist), against others (including his mother and sister), and property destruction such as punching holes in the walls. He will rip labels from household cans and bottles, and from clothes (his own and those of others), tearing the clothes in the process and rendering canned goods unidentifiable.

72. Dr Grandison was credible in her critique of a May 2009 psycho-educational report by a school psychologist with the Pleasanton Unified School District. In her experience, Dr. Grandison has never before encountered a single-page psychological report as shown by the PUSD triennial assessment of claimant. Dr. Grandison found the PUSD psychological report to be deficient and non-standard. The report, according to Dr. Grandison, not only contained little substantive information, but also the information therein was not correct. PUSD's psychologist relied only on two tests (the Stanford Binet-IV and the Leiter) which alone was below a necessary comprehensive assessment that prompts an evaluator to look at the patient's adaptive skills and intellectual functioning so that a reader of the report can receive a meaningful basis to accept the conclusion of the report. Moreover, Dr. Grandison found that the PUSD psychological report did not assess claimant "in all areas of disability." The PUSD report had no discussion, for example, of claimant's communication, language or adaptive skills. And the report did not mention any parent input or any behavioral observations either during an office session with claimant or in any other environment, for example, the classroom or a playground. In essence, the report failed to depict claimant's strengths and weaknesses. The report was woefully inadequate for the school district to determine that a facility such as Spectrum would be beneficial to claimant.

73. Dr. Grandison administered claimant the Wechsler Adult Intelligence Scale-II test. The test showed claimant to have a verbal IQ at 63, which is below the first percentile. His lowest scores grew out of tests requiring more language processing and more complex answers. Claimant's language skills area is a "major disability" for him. But claimant showed "relative strength" in the perceptual reasoning domain testing. And with another test for non-verbal intelligence measures (CTONI), the results were remarkable according to Dr. Grandison. Complaint's analysis of geometric designs and patterns was in the age-expected range (Geometric IQ 98). His overall non-verbal IQ was in the low average range (CTONI Overall IQ 80). Hence, Dr. Grandison concluded that claimant "should not be simply considered low functioning across the board."

Under academic skills, Dr. Grandison found "huge discrepancies." Claimant's computational math skills "are astonishing" and above age expectation. His ability corresponded to "a grade level above high school." But in language, complainant scores at the second-grade level. Even though his spelling skills are "very strong" and nearly at grade level, complainant's ability to combine sentences is very low. His sentences

generally are incorrect and incomplete. Claimant shows that he can read single works “very well; but, his reading comprehension is very deficient. He shows a very limited language capacity.

Insofar as attention and executive functioning, claimant’s ability varied. When confronted with a task for which he has strength, such as Algebra and advanced mathematics, claimant’s attention “was very strong.” But in areas that bothered him, such as language arts, Dr. Grandison noted that claimant found it difficult “to stay with it.” In a structured environments with an adult guiding him, claimant can be cooperative and on task. He can follow directions, but he cannot easily decide on an approach to accomplish a task “unless clearly guided.” At the time of testing, Dr. Grandison found that claimant cannot “in a constructive way manage his own time.”

74. Dr. Grandison established that “claimant’s educational and therapeutic needs are tremendous” and such must be addressed in a comprehensive and intensive way in order for his behavior to be brought under control. Dr. Grandison notes that with a proper administration of supports and services claimant can reach “the best of possibilities” of activities he can perform; but now his limits are “not yet known.” Such a comprehensive and intensive program is necessary “in order for him to learn academic/ vocational/ independent living skills to the [greatest] degree possible.” Dr. Grandison went on to establish that:

[Claimant] needs an educational/therapeutic *residential placement* where behavioral management is available and applied 24 hours per day, seven days per week. The staff around him needs to be well trained and be specifically able to handle severe autism. Hence, a group home where staff is typically not specialized in treating autism not implementing behavioral management on a 24-hour basis is not recommended at this time. In addition to behavior management, claimant has a great need for communication support, academic support, as well as vocational training.”

(Emphasis added.)

In essence, claimant requires a high level of expertise by committed personnel with significant experience in serving persons afflicted with Autism along with a team approach in an ongoing collaboration to bestow adequate and proper services and supports upon claimant.

75. Dr. Grandison provided compelling analysis of records developed by Crisis Home that pertained to claimant’s 35-day stay at that facility before he reached his 18th birthday. The progress notes formulated at Crisis Home were determined by Dr. Grandison to be lacking in proper definitions of behavior such as “aggression,” “hitting others,” “head banging,” and were devoid of baseline behaviors characteristics that are sought by psychologists. Such absences of professional components in progress notes showed poor crafting of any behavior report because the Crisis Home’s documents do not provide a reader with insight to ascertain the nature and scope of a behavior program. Moreover, Dr.

Grandison determined that progress notes by Crisis Home regarding claimant did not suggest that a beneficial behavior program had actually been carried out. Dr. Grandison was not impressed that claimant gained any form of progress from his stay at Crisis Home.

The “Discharge Summary with Multiaxial Diagnosis” report as prepared on September 16, 2010, by Crisis Home’s clinicians were wholly inadequate. The discharge report, according to Dr. Grandison, was internally inconsistent with regard to the report and analysis of incidents that pertained to days for self-injurious behavior, claimant’s acts of hitting others and chronicling instances of multiple incidences. Dr. Grandison established that Crisis Home’s records failed to properly note the critical information such as “what was effective,” “what measures were tried” and “the charting of his baseline behaviors” to aid the amelioration of claimant’s aberrant behaviors.

76. On November 8, 2010, Dr. Grandison visited Rose’s Care Home and conferred with that Level 4I’s owner/administrator. Dr. Grandison found the owner to be “a very delightful person” and that her facility “was a clean and very nice home;” but, Rose’s Care Home was not appropriate for claimant’s treatment needs. Dr. Grandison detected that Rose’s Care Home had no adequately developed program to address claimant’s extreme behaviors. The clinical psychologist found that Rose’s Home offered no discernible consistency between home and school, which Dr. Grandison has determined is essential to claimant. (Dr. Grandison credibly asserted that vocational training in a tightly controlled setting, which may be carried into the residential realm, is “absolutely essential” to lead claimant to acquire vocational skills at this critical point before he moves into adulthood.)

77. Dr. Grandison compellingly refuted an entry in service agency’s email message by Ms. Gilbert that falsely attributed the psychologist as telling Rose’s Care Home’s owner “that consumer’s mother was looking for something different . . . .” But contrary to the email by service agency’s employee, Dr. Grandison believably stated at the hearing that when she ended her visit at Rose’s Care Home she had the thought that some time in the future the facility might be a suitable setting where claimant could reside. And Dr. Grandison persuasively asserted that her opinion regarding the proper residence at this time for claimant was based upon her knowledge, training and experience as a psychologist, who operated independently of claimant’s mother in formulating treatment plans.

78. Dr. Grandison was persuasive in proclaiming that the proposed use of a consulting behaviorist by Rose’s Care Home for claimant would be inadequate and not efficacious. Claimant’s complex set of problems is so challenging that a consultant who might periodically see claimant during visits to Rose’s Care Home would be a waste of time and unlikely to be productive. Successful handling of claimant’s case on a consultancy basis would be nearly “an impossibility” regarding improving claimant’s pattern of aberrant behaviors. Claimant requires an onsite behaviorist who would interact with claimant on a day-to-day basis and where such behaviorist would implement a discreet 24-hour plan for claimant.

Dr. Grandison demonstrated that Rose's Care Home proposed to offer merely a care-taker setting that contemplates use of a consultative behaviorist in making periodic visits with the consumer. Dr. Grandison heard Rose's Care Home's proposed consulting behaviorist, Dr. Marilyn Colon, make an admission that claimant's disorder would not benefit from a consultative model for which Rose's Care Home could provide only care. Such a consultative model would be an inappropriate treatment for claimant. Dr. Grandison understood that Dr. Colon was proposed to visit with claimant from once each week to a few times per month, which was a pattern of interaction that would be highly inappropriate to gain progress with claimant's aberrant behaviors.

79. Dr. Grandison also visited the school district's proposed educational placement site for claimant, namely Spectrum school in Pittsburg, California. Also Dr. Grandison understood that service agency contemplated Spectrum school was to be claimant's educational setting upon being a resident at Rose's Care Home.

Dr. Grandison proclaimed that claimant's hope for a setting that would aid him in overcoming the severity of his array of disorders along with his maladaptive behavior necessitated a behavioral program that would be on a 24-hour basis. Spectrum school did not meet the level of service required to adequately to educate claimant.

Claimant's expert witness was persuasive that she found Spectrum school would offer a very unstructured classroom with a great number of students, that is eight to 12 pupils taught by a single teacher. Even though Dr. Grandison detected that a student at Spectrum might have a 1:1 aide, the Spectrum program was oriented around a teacher-centered environment. Through Spectrum, claimant would not have been given behavioral program or supports relevant to his level of need. Dr. Grandison determined that Spectrum school had no ability to provide any consistency with the behaviorist guided program that might be planned or carried out at Rose's Care Home. Further Spectrum had no vocational training program, which was needed by claimant as he enters adulthood.

And despite prior school reports where complainant was described as mentally retarded, Dr. Grandison found claimant to have a low-average non-verbal IQ, and impressive abilities in the area of adaptive functioning and the area higher math, among others. Dr. Grandison reported she had been informed that aggressive behaviors and episodes of self-harm in the classroom would result in the use of restraints at Spectrum school. But the developmental neuropsychologist found the Spectrum staff was not trained for, and there was no program to provide, other methods. Therefore, Dr. Grandison concluded Spectrum was not appropriate to serve or support claimant.

80. Without contradiction by any witness called or documentary evidence presented by service agency, Dr. Grandison compellingly established that claimant as an individual with Autism requires a specialized, consistent program that will address his behaviors "across environments." *The concept of across environments* in claimant's case means that he will be extended services and supports in a facility that can be characterized

as operating within a setting combining a residential-home environment and school-like realm. Such a setting is necessary in order for complainant to be able *to respond to one set of expectations, one set of rules, and to conduct himself according to one standard of behavior.*

81. Dr. Grandison's work included re-familiarizing herself with the programs offered by Heartspring. Heartspring is renowned for its treatment of individuals having server cases of Autism and related behaviors. The facility has staff behaviorists, a developmental pediatrician, a staff psychiatrist, three nurses, teachers and other personnel who are thorough educated regarding the services that will benefit students with Autism. Also Heartspring employs several speech and language therapists and all students under an assistive technology evaluation. Being familiar with Heartspring as therapeutic program, Dr. Grandison has determined that the Kansas facility would fit the criteria she prescribed for claimant. Dr. Grandison recommended Heartspring as "a placement that would meet claimant's very complex needs."

82. Paramount to Dr. Grandison's convincing evidence was the expert witness's opinion that turned upon the very good prospects for claimant at Heartspring, which has the program expertise, physical plant, and dedicated professionals to deliver to claimant a consistent program that is managed and extended to him in a coherent method across settings and across people. Dr. Grandison established that insofar as the best provision of services and supports to claimant, it is "consistency in management" that operates as the key, dominant, and central component. Because no such program has been located in California, Dr. Grandison concluded Heartspring is the most practical facility and program for claimant.

c. *Wayne Charles Piersel, Ph.D.*

83. Wayne Charles Piersel, Ph.D., offered persuasive and compelling evidence on behalf of claimant.

84. Dr. Piersel has a Ph.D. in psychology as awarded him by the University of Arizona. He is licensed as a clinical psychologist in the states of Kansas and Nebraska. He has approximately 40 years of experience "in the field" of assessing and treating persons with developmental disabilities. And he is a professor of psychology at the University of Nebraska.

85. For the past 10 years, Dr. Piersel has been a psychologist at Heartspring. Currently he is the Director of Psychological Services at Heartspring. As the program manager, Dr. Piersel supervises Heartspring's psychology professionals, which include four behavioral specialists and two other PH.D. psychologists.

86. Dr. Piersel vividly, thoroughly and credibly described the nature of Heartspring as well as the "clients" served by the facility.

Heartspring's clients are predominantly persons who have the diagnosis of Autistic Disorder. Many clients have secondary diagnosis of mental retardation, and Down's Syndrome. And a substantial number of clients come to Heartspring with patterns of aberrant behaviors.

Heartspring takes a multi-disciplinary approach to the treatment of severe maladaptive behaviors in individuals with Autism. Heartspring has two separate programs; one of which is an outpatient program that acts as a community services program known as the "Day Program," while the other program is the residential program. At the time of the hearing, Heartspring had 53 students in the Day Program and 49 students in the residential program.

Heartspring has six buildings that comprise group homes for the residential program. No more than eight children are housed in a single group home. Each group home is fully staffed twenty-four hours each day, including two "awake" staff persons in each building "over night." And there is at all times a supervisor on Heartspring's campus. (Heartspring has, in addition, an off-campus condominium that houses three students, who are generally within one year of a "transition" to their respective homes.) The Heartspring complex is situated on a 22-acre plot, which is surrounded by several apartment buildings. (There are no fences, and neighbors walk and ride bicycles through the campus and have some contact with Heartspring students. Heartspring finds the public's access onto its campus as being beneficial to the therapy of Heartspring clients in their orientation to integration into the general populace.)

During the "second" shift, which operates from 3:30 P.M. to 10:30 P.M., each of the six homes has a staff of between six and eight para-professionals. Each structure has a coordinator or an assistant coordinator to manage the programs. For the third shift from 10:30 p.m. to 6:00 a.m., 12 staff persons are distributed among the six buildings. The educational programs have two teachers who hold master's degrees.

The para-professionals are responsible for the direct implementation of various programs, cleaning tasks, cooking instructions, average daily living skills and educational instructions. An assigned para-professional is also involved with data collection activity regarding a client's behaviors. The data is placed on "yellow data" sheets that always accompany a client. Data sheets have written entries made by the para-professionals during each waking hours for clients.

87. Dr. Piersel pointed out that children come to Heartspring because of primary reasons entailing either aggressive behavior or "*significant* self-injurious behavior."

Dr. Piersel compellingly explained that Heartspring's professional staff design and implement discrete, individualized behavior intervention plans for students. Such plans are consistent programs that involve 24-hour per day oversight of all activities of consumer occurring between home and school settings. The plans are executed by teams of certified teachers, licensed medical professionals, psychologists and nursing staff and

trained para-professionals who collect data 24 hours a day. The collected data is analyzed and distributed among the psychological professionals at weekly meetings. The detailed study of the data allows for adjustments in program focus when necessary.

Dr. Piersel established that the Heartspring staff is available on rotations 24 hours per day, so that staff is available for consultations seven days a week and any staff member can suggest changes to the program at the weekly meetings, regardless of their job title. An example of the necessity of such a comprehensive approach was the issue of claimant's medications, which were increased when he was removed from school. How to decrease medications has been of great concern to claimant's mother and the IPP team. Dr. Piersel indicated that without a structured program, comprehensive data and input from the home staff as well as teachers and para-professionals, it would not be possible for the medical and nursing staff to understand medication effects or to make decision regarding changes, in addition to other health issues which affect behaviors and treatment successes for Heartspring clients.

88. Dr. Piersel persuasively noted that Heartspring has a focus on the need to create structures and supports that minimize verbal prompting. Such a mechanism avoids "prompt dependency" whereby an autistic person may learn to wait to be prompted to perform tasks and lose their ability to initiate their own action or avoidance of action. If such structures and supports are not consistent across environments, treatment will not only be ineffective but may result in confusion, stress and more maladaptive behaviors on the part of the consumer. Dr. Piersel gave an example of the school and home staff collaborating to develop icons for non-verbal prompting of tasks and schedules, and the ongoing process of understanding how to gauge their effectiveness. He explained how behaviors can disrupt a schedule at a regular home or school, resulting in successful avoidance of a non-desired task or outcome and possibly escalating into behaviors and punishment such as when a student has to be on the bus at a certain time, or has to return from lunch when the bell rings. Dr. Piersel discussed the schedule between home and school at Heartspring as being flexible so as to allow clients to work at their own pace to complete activities even if behaviors disrupt their program. In this way such maladaptive behaviors do not become a strategy for avoidance or an offense which results in punishment.

Dr. Piersel credibly illustrated the problems created with an inconsistent, unstructured program when he reviewed the Progress Notes from the Crisis Home. He noted how one day claimant was told at the Crisis Home that *maybe later* he would get a preferred outcome such as a walk if he did something correct at that moment, leaving claimant uncertain about what would happen, even if he were compliant. Dr. Piersel noted that sometimes claimant was told he could select a favored activity but other times his request was denied or told it would happen at some other time, preventing claimant from knowing what exactly was the rule about how he gets what he wants or needs. There was no evidence of any schedule at the Crisis Home (corroborated by claimant's mother) so claimant could not predict what would happen next and initiate actions appropriate to the events of the day as they occurred. Dr. Piersel pointed out how important it is for



individuals with autism to have predictability in order to anticipate what comes next and minimize stress and anxiety. He discussed the need for developing meaningful non-verbal prompts to accomplish including written schedules or icons that, if done properly, can fulfill this need.

Dr. Piersel also compellingly discussed at the hearing that vocational opportunities for claimant at Heartspring including pre-vocational skill programs in the classroom setting and actual paid work at Heartspring and in the community. He described the life skills and community integration programs and the transitional housing that exists off-campus for students who are ready to transition back into their home communities and live as independently as possible.

Dr. Piersel showed that a meaningful, appropriate program must be individualized according to claimant's needs, claimant's ability to communicate, and in accordance with therapeutic services that actually works for him as an individual. The program, according to the persuasive testimony by Dr. Piersel, must be closely monitored across all environments in order to determine its effectiveness. Claimant is currently heavily medicated and the effects of these medications must be understood across environments, with changes carefully monitored by qualified medical staff in communication with school and house staff.

89. Dr. Piersel was credible and persuasive in offering criticism regarding the proposed therapy by the Rose's Care Home to claimant. Rose's Care Home's plan for claimant depicts inadequate approaches that consistent impacting claimant unduly with verbal prompting, which suggests burdening claimant in a way that he is destined to become "prompt dependent." Rose's Care Home, or any other home that lacks an integrated, complete program for consistency, will fail to move claimant towards acquiring a "natural system" for daily living skills. And the program by Rose's Care

Home lacked consistency with any form of education offered to claimant while a resident at that group home.

90. Dr. Piersel was believable when he stated that he found the records from the Crisis Home to have been inadequate. The lack of definitions for "aggression," "head hitting," and other "targeted" behaviors attributable to claimant was rendered worthless, or of little value, many notations in the Crisis Home records.

*a. Claimant's Mother/Conservator*

91. Ms. Shanti K., claimant's mother/conservator (claimant's mother) offered credible, compelling and persuasive evidence at the hearing of this matter.

92. Claimant and his younger sister reside with claimant's mother in a dwelling in the City of Pleasanton, Alameda County. Claimant's mother and father are divorced. His father resides in the Philippines, so that the man has little contact with claimant. Claimant's mother is the sole provider for the household that includes claimant.

93. Claimant's mother possesses a master's degree in Special Education. She is board certified as Allied Behavior Analyst. She is employed by Behavior Intervention Association, and she works with children afflicted with developmental disabilities and particularly Autism. Her employment involves the creation of plans regarding treating of both behavior excesses and behavior deficits shown by children with developmental disabilities. She trains staff personnel and oversees implementation of programs. And she participates in local school district in crafting and executing of IEPs. And since October 2010 Claimant's mother has worked as a part-time consultant with Understanding Behavior Incorporated (UBI).

94. Claimant's mother credibly described her frustration with slow responses from various agencies over the years regarding claimant's treatment and education.

Claimant's mother returned to the United States in March 2007 with the expectation of arranging treatment and educational facilities for claimant on his return in this country. Upon contacting a local school district, she met resistance and uncooperative barriers so that by July 2007 on the arrival of claimant, claimant's mother had no satisfactory placement. As a result of the obstacles for the provision of satisfactory placement for her son, claimant's mother hired an "educational consultant," Deborah Bloom. With the aid of Ms. Bloom, and through claimant's mother's description of his behaviors<sup>13</sup>, the local school district arranged his placement in the Spectrum Center school in Union City, Alameda County, California.

95. When claimant's behaviors escalated to involve dangerous<sup>14</sup> pica acts, claimant's mother sought assistance in late 2007 from the Autism Clinic on a referral from

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<sup>13</sup> In 2007, claimant's aberrant behaviors involved pica, obsessive destruction of window blinds, ripping out clothing tags, tearing off labels from cans, tantrums, banging objects on table tops and other surfaces, picking out grout around bathroom tabs, and interrupting conversations that his mother attempted via telephone calls.

<sup>14</sup> Claimant's mother became aware of claimant's clandestine activities regarding pica through the unusual occurrence of plates for light switches falling upon the floor. In late 2007 she first observed claimant use his finger nails to remove small screws from the light switch plates and to eat the screw. When a school teacher telephoned claimant's mother to report claimant's swallowing a screw, claimant's mother transported him to a hospital emergency room, which found through an x-ray that ten screws were in claimant's digestive system.

Claimant's pica also included clothing lint, "any kind of dirt," and liquids such a vinegar.

service agency. A caregiver was assigned to claimant for after-school hours. But a behavior consultant was not provided claimant until February 2008.

In 2010 when claimant's head banging began on a frequent basis, Autism Clinic made further assessments regarding claimant but no intensive program was implemented.

Also claimant's mother asked the school district to provide claimant with intensive treatment setting, but claimant's mother "got no where" with the school district's efforts regarding claimant's educational and support services.

In March 2010, claimant's mother received communication through service agency's employee, Ms. Limato, that the Autism Clinic did not find any further reason to provide more expansive assessment services to claimant. In an e-mail message, dated March 24, 2010, claimant's mother recorded her understanding of service agency's position regarding efforts to find a placement for claimant. The e-mail to Ms. Limato set out, in part: "I asked about the status of local and statewide search of [Level 4I group] homes and [search agency found] that owners of the homes declined to serve [claimant] due to his excessive [self-injurious] behaviors and other homes are full at this time."

Confronted with rejection from both the school district and the Autism Clinic, claimant's mother continued to pursue an objective of securing placement of claimant in a facility that would provide him with proper treatment. Claimant's mother turned to Carina Grandison, Ph.D.

96. Claimant remained enrolled at Spectrum Center in Union City from the Fall of 2007 until December 2008. Spectrum Center was visited by claimant's mother, who found claimant in a classroom along with children who had profound disabilities, which rendered those other students non-verbal. Then a service agency representative recommended claimant's transfer to PUSD's Amador High School. In January 2009 Claimant was enrolled in a "main stream" algebra class and cooking class, where he performed well. Also at Amador High School, claimant was provided with a one-to-one aide who accompanied him to classes and he received occupational therapy as well as individualized speech pathology classes.

97. Due to claimant's inconsistent educational progress and his ever-increasing aberrant behaviors, claimant's mother persisted with her request that service agency continue with its statewide search for claimant's placement in a self-contained treatment and training facility. In late fall 2008, claimant's mother met with the service agency team, which included a case manager named Regan and two other personnel including Mr. Rodriguez. At that meeting in late 2008, claimant's mother first requested service agency to place claimant at Heartspring in Kansas. Service agency's team response to claimant's mother was that the regional center's statewide search efforts would continue.

98. In March 2010, claimant was suspended or expelled from PUSD's Amador High School, after he hit teacher's aides. Claimant's mother intensified her request of both the school district for placement in a dedicated residential treatment/training program where staff and programs were experienced with claimant's level of aberrant behavior. Despite service agency's eight or nine month-long statewide search for an appropriate facility, no competent facility was found that would enroll claimant.

99. After being barred from Amador High School, the school district hired claimant's employer, BIA, to provide claimant with an in-home school program. In turn, BIA assigned claimant's mother as the in-home school provider. Claimant's mother created an academic program that consisted of claimant receiving algebra, English composition and other courses of instructions from 8:00 a.m. until 3:00 p.m. And subsequent to March 2010 service agency increased funding so that claimant received additional supports from aides, before and after school. And the support increased from a ratio of one to one to two in-home aides attending to claimant. Thereafter Ms. Lauren Wasano was retained to provide in-home behaviorist consultative services to claimant.

But despite all of the in-home services that were funded by both the school district and service agency after March 2010, notwithstanding a reduction of pica activity by claimant, his aberrant behaviors, which entailed injurious behavior to himself and others, escalated in degrees of intensity.

100. With claimant continuing maladaptive behaviors and his mother's growing inability to control him, in August 2010 service agency funded his placement at the Crisis Home. But he was released from that group home in mid-September 2010 when he reached 18 years of age.

101. Claimant's mother learned from service agency personnel that in late August 2010, a meeting occurred between service agency staff and the owner of a group home and its behavior consultant to discuss the prospect of the group home, known as Rose's Care Home to serve claimant after he reached 18 years of age. But as of August 31, 2010, Rose's Care Home did not have any residents and it had not been vendorized as a Level 4I facility. But in anticipation that Rose's Care Home would be duly authorized to provide services to claimant, on September 7, 2010, claimant's mother attended a meeting to discuss claimant's placement and to hear "mother's concerns." Rose's Care Home never demonstrated to claimant's mother that it could provide an appropriate setting for the provision of treatment to claimant.

102. Upon leaving the Crisis Home, claimant returned to the family home in Pleasanton wherein he received services and support from two aides during what would have been his regular school day, while awaiting the assignment of a home-school teacher, and for the Regional Center to put in place the same type of behavioral supports that he received before going to the Crisis Home. But from September 2011 through January 2011, when the hearing in this matter occurred, no behaviorist had provided services to claimant. And even though service agency funds two aides to attend to

claimant those caregiver leave the home at 7:00 p.m. Claimant's mother described incidents involving claimant's tantrums that have occurred at night and on Sundays that caused her to be in fear for herself and her daughter due to claimant's outbursts.

103. On September 7, 2010, service agency coordinated a meeting that permitted claimant's mother and personnel from Rose's Care Home, including its behaviorist, Dr. Marilyn Colon- to discuss the ability of the Level 4I group home and to discuss claimant's placement at Rose's Care Home. Claimant's mother learned from Dr. Colon that her role at Rose's Care Home was to "coordinate" programs that were formulated by others. Dr. Colon emphasized that she would periodically visit Rose's Care Home to interact with claimant.

In mid-September 2010, claimant's mother asked the owner/administrator for Rose's Care Home to provide her with a copy of the proposed "program design" plan that was contemplated for claimant. Either because English is not the first language for Rose's Care Home owner or that she lacked the ability to prepare a written program design, claimant's mother never received the document.

Also in September 2010, claimant's mother learned about the lack of training and experience of the personnel at Rose's Care Home relative to providing services to individuals, similarly situated as claimant, who had episodes of maladaptive behaviors of a dangerous nature.

Claimant's mother learned through the executive officer of UBI that Dr. Colon, who is retained by the company, was to provide only consultative behavioral services to Rose's Care Home. Dr. Colon, through Rose's Care Home, contemplated only the delivery of "care" to claimant as opposed to "treatment," which is a more involved process than rendering care.

104. Based upon the facts developed at the hearing of this matter, claimant's mother was reasonable when she rejected Rose's Care Home as a Level 4I group home where claimant would be placed.

105. At the hearing of this matter, claimant's mother poignantly proclaimed that she "could not do it any longer" insofar as the burden that would continue to be placed on her to design and implement a bridging plan between Rose's Care Home and a proposed placement.

#### *Claimant's Mother's Reasonable Rejection of Service agency's Proposed Placement*

106. Claimant's mother received the resumes of the individuals employed at Rose's Care Home, who were proposed to be staff members who would provide claimant's day-to-day care. Also claimant's mother received a document with proposed activities and program for claimant. From her review of the information about Rose's Care Home's personnel, claimant's mother persuasively revealed at the hearing of this

matter her reasonable determination that Rose's Care Home did not employ personnel who could serve complainant.

Claimant's mother was reasonable in her distress when she discovered information regarding Rose's Care Home staff. She discovered the following:

(a) Rene R., (the initial nominated 1:1 aide; and also referred to as Rene); is a Cuba-trained medical doctor, who is waiting to become licensed as a physician in the United States. But Rene had no experience or training whatsoever working with individuals with Autism. Rene's most recent employment experience was working in "front and back office duties" in a pediatric office including "basic computer skills." (It was later determined Rene would not be working with Claimant.)

(b) Like Rene R., Ms. Cris, also lacked training or experience with behavioral programs for treatment of individuals with aberrant behavior due to Autism. Her work history consisted of mechanical assembly of computer chips and working in an Intermediate Care Facility "monitoring vital signs and oral medication under the supervision of registered nurses and prescriptions. She performed house keeping duties such as cooking, cleaning, washing clothes and dishes, running errands." Ms. Cris was then employed in a day program whose clients were not shown to include anyone with Autism, doing much of the same "personal duties like cleaning dishes, sweeping and mopping floors" . . . and assisted with community outings to libraries, movies and "helping these people be in good behavior inside the community."

(c) Mr. Martinez, a former tree service employee and pipe fabricator, also worked at the same day program as Ms. Cris. His duties consisted of assisting clients "with daily activities," driving a large van to transport clients, being a "daily care taker" and taking clients to parks, movies and restaurants.

(d) Mr. Bojorquez had no work experience or training for treatment of autistic individuals with severe behaviors, although he had received training from "ARC University" in Crisis Management, had a six-hour Introduction to Autism Spectrum Disorders class, and a "Basic Course Workshop in Professional Adult Crisis Training PRO ACT" at Rose's Care Home. PRO ACT was referenced at hearing as a method for restraining individuals.

107. In response to the question of how Rose's Care Home would provide a program to serve Claimant's current need for treatment of his behaviors, claimant's mother was provided with "Planned Activities for Claimant," which showed that throughout his day claimant's program would consist of being prompted to perform daily living activities such as brushing his teeth and getting dressed, and he would be praised when he accomplished these tasks.

When claimant's mother asked Rose's Care Home for more details regarding the programs and supports that claimant would receive, including how there would be coordination and consistency between home and school, she was told that it would not be the duty or responsibility of Rose's Care Home to effect the coordination for the consistency of programs. And Rose's Care Home personnel had accepted claimant as a client with the understanding that such coordination was not to be their job. In an internally contradictory e-mail communication, claimant's mother was assured that Rose's Care Home would provide consistency between home and school but made it clear that:

*We accepted the [service agency's] proposal with the idea in mind that Regional Center Case Manager will be the party responsible to supersee (sic) that all institutions that would work with Claimant from now on are following a consistent program. Rosellen Pena, Inc.<sup>15</sup> was not present during the said IPP meeting. If [claimant] is placed with us, we will ensure there is consistency between [claimant]'s school program and Rose's Care Home program (Goals, Intervention, Data collection) but the ultimately (sic) responsible party to oversee this would service agency. Service agency will also be responsible for presenting you with a plan to achieve all this. Once the school situation has been identified, I believe the Regional Center has in mind to hire an Educational consultant (sic) that will work with all institutions to ensure there is consistency between programs. Rosellen Pena, Inc. does hire a behavioral consultant but their responsibilities aren't to supersee (sic) nor coordinate between institutions.*

(Emphasis added.)

108. Rose's Care Home made additional communication with claimant's mother that led her to draw a reasonable inference that that facility could not provide an adequate setting to provide the correct treatment for claimant.

109. Claimant's mother then inquired of Ms. Gilbert whether Rose's Care Home was correct in its belief that service agency would provide an Educational Consultant to ensure consistency between home and school programs and implementation. Ms. Gilbert responded that *service agency would not hire an educational consultant and added "[t]he conservator can hire and oversee and (sic) educational consultant if he/she deems it to be necessary."* (Emphasis added.)

110. Claimant's mother had also been told by Dr. Colon, the proposed behavior consultant hired by Rose's Care Home to consult with their staff, that the *program design for Claimant at Rose's Care Home must be provided by Rose's Care Home and the Regional Center*. And claimant's mother heard Dr. Colon say that her role was simply to provide consultation regarding how a program would be implemented. Dr. Colon understood that she would not provide an intensive behavior intervention program for claimant.

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<sup>15</sup> Legal name of Rose's Care Home that accepted claimant as a client.

111. When claimant's mother asked Rose's Care Home's managers about program design for claimant's goals, including addressing his severe behaviors, she was informed, contrary to the statement by Dr. Colon, that no such program design would be forthcoming from Rose's Care Home. Claimant's mother was told: *"If you could design a model of the structure you would like us to follow in regards of consistency between home and claimant's potential school it will simplify things. As part of the ID team, (sic) this model structure you will design will become the foundation for the procedures we will follow/implement once your son becomes our resident."* (Emphasis added.)

112. Since Rose's Care Home manager/owner and its behavioral consultant were not planning to design any program to address claimant's behaviors, and because both told claimant's mother that service agency would be responsible for all oversight between institutions and creating the program, or that claimant's mother design the program herself, claimant's mother turned to the only remaining party in this equation- the regional center. Claimant's agency asked Ms. Gilbert "how the Regional Center's ID team and the Antioch home (Care Home) envision this placement from the perspective of creating consistency between home and school" and *"How do you see the role of the Regional Center overseeing claimant's program?"* including *"What role and tasks would the Regional Center staff have in creating a consistent program between home and school and seeing that the program accomplishes that goal?"* (Emphasis added.)

Claimant's mother heard Ms. Gilbert respond by stating, *"Regarding the role of the Regional Center: at conservator's request, we can attend IEP meetings, communicate with home and school, request UBI (behavior consultant) to meet with school during their consultation hours in order to create appropriate a behavioral plan. The IEP, ISP reviews/quarterly meetings, and IPP meetings will be vehicles for ID team discussions (under the provisions of the Lanterman Act)."* (Emphasis added.)

On November 8, 2010, based upon all of the above and after Dr. Grandison had had the opportunity to visit Rose's Care Home and made her recommendations, claimant's mother notified all parties that she believed Rose's Care Home was not appropriate for claimant at this time.

### *Ultimate Factual Findings*

113. Claimant has significant and substantial challenges that would benefit from regional center services and supports. Claimant's mother presented competent documents, and called expert witnesses, to establish that service agency's personnel and associated evaluators have failed to assess the totality of claimant's complex developmental disorders and, hence, have not properly formulated the delivery of appropriate treatment.

Despite the good faith of service agency's professional evaluators that claimant is not eligible for regional center services, the weight of evidence supports a conclusion that



claimant's challenges pertain to an array of disorders that are more severe than the likelihood that he is being impacted only by learning disorders or oppositional tendencies. Rather claimant is substantially disabled in the areas of gravely severe aberrant behaviors that consist of self-injurious behavior and dangerous aggression against others. His condition originated before he attained 18 years of age. And the disorders that afflict him will continue indefinitely. His condition is not the product of solely a psychiatric disorder, learning disability or solely physical malady. And his treatment is being neglected by delays by service agency in placing him in a proper and appropriate treatment environment.

## LEGAL CONCLUSIONS

### *Burden of Proof*

1. In a proceeding to determine eligibility, the burden of proof is on the Claimant to establish she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.) Claimant has met his burden.

### *Statutory Authority*

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4418.7, subdivisions (a) and (b), establish that:

(a) If the regional center determines, or is informed by the consumer's parents, legal guarding, conservator, or authorized representative that the community placement of the consumer is at risk of failing, and the admittance to a state developmental center is a likelihood, the regional center shall immediately notify the appropriate regional resource development project, the consumer, and the consumer's parents, legal guardian or conservator.

(b) In these cases, the regional resource development project shall immediately arrange for an assessment of the situation, including, visiting the consumer, if appropriate, determining barriers to successful integration, and recommending the most appropriate means necessary to assist the consumer to remain in the community. If, based on the assessment, the regional resource development project determines that additional or different services and supports are necessary, the department shall ensure that the regional center provides those services and supports on an emergency basis....

Welfare and Institutions Code section 4501 states:

*The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. . . .*

The complexities of providing services and supports to persons with developmental disabilities requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services and supports. A consumer of services and supports, and where appropriate, *his . . . parents, guardian, shall have a leadership role in service design.*

*An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life to support their integration into the mainstream life of the community. . . .*

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities. . . .

The Legislature finds that *the mere existence or the delivery of services and supports is, in itself, insufficient evidence of program effectiveness.* It is the intent of the Legislature that agencies serving persons with developmental disabilities *shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served.*

(Emphasis added.)

Welfare and Institutions Code section 4502 provides:

Persons with developmental disabilities shall have the same legal rights and responsibilities guaranteed to all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California . . . . It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(a) *A right to treatment and habilitation services and supports* in the least restrictive environment. Treatment and

habilitation services and supports *should foster the developmental potential of the person* and be directed toward the achievement of the most independent, productive and normal lives possible. Such services shall protect the person liberty of the individual and shall be provided in the least restrictive conditions necessary to achieve the purpose of the treatment, services or supports.  
(Emphasis added.)

Welfare and Institutions Code section 4512, subdivision (b), establishes:

‘Services and supports for persons with developmental disabilities’ *means specialized services and supports . . . directed toward the alleviation of a developmental disability or toward the social, person, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.* The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. *The determination shall be made on the basis of the needs and preferences of the consumer, or when appropriate, the consumer’s family* and shall include consideration of a range of service options proposed by the individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan and the cost-effectiveness of each option. Services and supports . . . may include but are not limited to, diagnosis, evaluation, treatment . .  
(Emphasis added.)

Welfare and Institutions Code section 4519, subdivision (a), states:

The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any services outside the state unless the Director of Developmental Services or the Director’s designee has received, reviewed, and approved a plan for out-of-state service in the client’s individual program plan developed pursuant to Section 4646 to 4648. *The department shall authorize the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state.*  
(Emphasis added.)

Welfare and Institutions Code section 4629 set forth:

(a) *The state shall enter into five year contracts with regional centers* subject to the annual appropriation of funds by the Legislature.

[¶] . . . [¶]

(c) *The contracts shall include annual performance objectives that shall* do both of the following:

(A) Be specific, measurable, and designed to do all of the following:

(i) *Assist consumers* to achieve life quality outcomes.

(ii) *Achieve meaningful progress* above the current baselines.

(iii) *Develop services and supports* identified as necessary to meet identified needs.

(Emphasis added.)

Welfare and Institutions Code section 4646, subdivision (a), sets forth:

It is the intent of *the Legislature to ensure that the* individual program plan and *provision of services and supports* by the regional center system is *centered on the individual* and the family of the individual with developmental disabilities and *takes into account the needs and preferences of the individual and the family*, where appropriate, as well as promoting community integration, independent, productive and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

(Emphasis added.)

Welfare and Institutions Code section 4647, subdivision (a), provides:

Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including but not limited to, participation in the individual

program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing through purchasing or obtaining from generic agencies or other resources, services and supports specified in the person's individualized program plan; coordination of service and support programs; collection and dissemination of information; monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

Code section 4648, subdivision (a)(6), establishes:

*The regional center and the consumer, or where appropriate his or her parents, . . . (or) conservator . . . shall, pursuant to the individualized program plan, consider all of the following when selecting a provider of consumer services and supports:*

- (A) *A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individualized program plan.*
- (B) *A provider's success in achieving the objectives set forth in the individualized program plan.*
- (C) *Where appropriate, the existence of licensing, accreditation, or professional certification.*
- (D) *The cost of providing services or supports of comparable quality by different providers, if available.*
- (E) *The consumer's or, where appropriate, the parents, legal guardian or conservator of a consumer's choice of providers.*  
(Emphasis added.)

Welfare and Institutions Code section 4652 provides, "A regional center *shall investigate every appropriate and economically feasible alternative* for care of a developmentally disabled person available in the region. *If suitable care cannot be found within the region, services may be obtained outside of the region.*"  
(Emphasis added.)

Welfare and Institutions Code section 4659 states:

- (a) *Except as otherwise provided in subdivisions (b) or (c), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. The sources shall include, but not be*

limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of services, including Medi-Cal . . . *school districts*, and federal supplemental security income and state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

(b) *Any revenues collected by a regional center pursuant to this section shall be applied against the cost of service* prior to use of the regional center funds for the services. This revenue shall not result in a reduction in the regional center purchase of services budget, except as it related to federal supplemental security income and the state supplementary program.

(c) This section *shall not be construed to impose any additional liability on the parents of children with developmental disabilities*, or to restrict eligibility for, or deny services, to any individual who qualifies for regional center services but is unable to pay.  
(Emphasis added.)

#### *Discussion*

A. *Claimant's Request for Out-of-State Placement at Heartspring Qualifies as Treatment, Services and Supports under the Lanterman Act.*

i. *The Mandate To Provide Critical Services.*

1. The Lanterman Act establishes an entitlement for eligible consumers to diagnostic, treatment and habitation services through regional centers. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal. 3d 384, 392.) Under the Act, the State of California accepts an obligation to provide facilities and services that are sufficiently complete to meet the needs of each individual with a developmental disability, regardless of age or disability. (Welf. & Inst. Code, § 4501.)

As an individual with a developmental disability, claimant's placement at Heartspring would grant claimant access to critical services that are necessary for him to have a more independent and productive life, which will affect the totality of his life situation. (Welf. & Inst. Code, § 4501, subd. (a)). The evidence at the hearing rendered undisputed the fact that claimant requires extensive treatment for his pervasive, severe maladaptive behaviors, which have not been successfully addressed: (a) through a non-public school (Spectrum), (b) in a public school (Amador High School), (c) with an arrangement with a 1:1 or 2:1 aide(s), (d) through behavioral support programs at home or in school, or (e) at the Crisis Home. No IPP or IEP program has resulted in any successful

combination of salubrious services and supports for claimant. No amount of meetings by the school district personnel, service agency personnel, regional center committees, or collections of data and the reports that were generated have resulted in the identification and implementation of any program of treatment, supports and services that have changed claimant's behaviors. There has been a pervasive failure of success to arrest claimant's aberrant behaviors as he approaches adulthood. Service agency's failures preclude him from being integrated into the mainstream of community life to live, work, and play as independently and as much as like people without disabilities as possible, as mandated by Welfare and Institutions Code section 4501. Because of the inadequate program offered claimant by service agency, and the recalcitrance of the subject school district to cooperate in providing collaborative responses to render adequate supports and services to claimant, claimant moves further away from desirable goals with each unremitting episode of self-injurious behaviors, attacks upon others, elopement, property destruction, obsessions that cause him to invade the property of others to gain access to desired objects, inappropriate vocalizations including screaming when given instructions, taking food, and inappropriate touching of others in the community.

Dr. Grandison and Dr. Piersel established by way of expert witness testimony, without contradiction by any service agency witness or regional center documentary proof, that as an individual with Autism, claimant requires a specialized, consistent program that will address his behaviors "across environments." In his case, "across environments" means treatment and professionally administered supports and services between home and school support system. Such across environment system is necessary in order for claimant to be able to respond to one set of expectations, one set of rules, and to conduct himself according to one standard of behavior.

Past programs and supports by service agency and the school district, along with the heroic efforts by claimant's mother, have been tried in good faith; but, those programs and supports were not comprehensive, integrated, or consistent and were ultimately unsuccessful. For claimant, the only alternative offered to Heartspring is a repetition of these past, failed efforts.

ii. *The Mandate Of Individualized Services.*

2. The statute regarding the individualized nature of service provision to eligible consumer, as confirmed by California courts, is not ambiguous. (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 211 Cal. 3d 391, 392; *Williams v. Macomber* (1990) 226 Cal. App. 3d 225, 232.) In this case, Rose's Care Home, and especially the facility's behavior consultant and service agency's personnel, have admitted that they cannot or will not provide individualized service in the form of appropriate treatment required by claimant. Each entity expected the other agency, or claimant's mother, to create and carry out a plan of treatment and ensure consistency between home and school.

The weight of evidence is undisputed that appropriate, individualized treatment to claimant can be provided by Heartspring. Thus, claimant's placement at Heartspring, a treatment center which specializes in consumers like claimant, meets the statutory mandate of services and supports that constitute an individualized program centered on the needs of the individual.

Importantly, no evidence suggested that Heartspring would not be effective or cost-effective in meeting the goals of claimant's IPP. Conversely, there is no evidence to establish that repeating the services that have already failed (behavioral consultation, 1:1 aide, non-public school) would be effective or cost-effective.

*iii. A Vocational Program Is A Necessary Support.*

3. Also Heartspring can provide claimant with a much needed vocational program as he enters adulthood. Such a program would fulfill the legislative mandate of Welfare and Institutions Code sections 4512, subdivision (b), and 4648, subdivision (a)(2). That mandate provides that a wide variety of services and supports are to be provided to assist consumers to achieve and maintain independent, productive, normal lives. Yet these services and supports are to be flexible and individually tailored to the consumer. Dr. Grandison's report and testimony established claimant has both the intelligence and the need to access vocational services as he reaches adulthood. The evidence established claimant will not be provided such service if he is placed locally in a group home, which has inexact oversight from a behavior consultant, and while he is enrolled in discretely situated school with special education classes, which is populated with a dozen other markedly impaired individuals, and where he lacks individualized attention. Claimant's mother credibly demonstrated that her efforts were denied to have claimant evaluated by the school district in order to determine how to access a vocational program. And Rose's Care Home had no vocational program for its resident consumers such as claimant.

*iv. The Mandate Of Individualized, Effective Delivery of Services.*

4. Dr. Piersel established that an effective program to modify claimant's behaviors requires a round-the-clock gathering of data that is reviewed, disseminated and utilized continually by a collaborative team of doctors, nurses, psychologists, teachers, and para-professionals. The team of professionals, and the para-professionals, who are supervised throughout the day, is necessary to determine how a comprehensive program is actually delivered, made effective, and then the program changed as needed.

At Rose's Care Home, untrained aides lack specialized training to meet the challenges of treating claimant when faced with his severe behaviors, as well as ongoing, professional supervision necessary for his health, welfare and safety. The only individual known to be part of the day-to-day delivery of services at Rose's Care Home was the owner/Administrator, but the record lacks evidence regarding the exact training or credentials held by her, other than that she has worked for some autistic clients in other



care homes. Service agency's evidence provided no competent, credible evidence regarding the needs and level of functioning of Rose's past clients to determine any ability on the part of Rosa, the owner of Rose's Care Home, to serve someone similar to claimant; even if an off-site consultative behaviorist created a program for Rose's Care Home to follow. And the records of the Crisis Home demonstrated the ineffectiveness in the delivery to claimant of services by that facility's staff. Moreover, Crisis Home's program lacked adequate and appropriate structure and support according to the persuasive and compelling evidence offered by claimant's expert witnesses.

Rose's Care Home's personnel explained to claimant's mother that any data they collect with regard to claimant's behavior and incidents would only be subject to review on a quarterly basis. Such limited review was explained by service agency's expert, Dr. Huang- as all that Rose's Care Home is required to do by law and regulation. Thus, claimant's Rose's Care Home program would not be individualized to allow consideration of problems, effectiveness or necessary changes more than every 12 weeks, regardless of the intensity of his needs.

v. *The Mandatory Criteria for Selecting a Provider.*

5. Also claimant has met the criteria of Welfare and Institutions Code section 4648, subdivision (a)(6), that directs that placement in a residential treatment program is not to be determined by whether a bed is available within the state, but rather by *specific* criteria. Such criteria must weight the respective benefits that relate to both Hearstspring and Rose's Care Home. Those criteria include:

a. *A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individualized program plan.* With reference to the need for a highly structured program as required at home and school, claimant's IPP stated claimant's program design should be "communicated, implemented and monitored consistently" in both environments. Although service agency argued that by agreeing to accept claimant, Rose's Care Home had determined the facility could serve the subject consumer's needs, Rose's Care Home's communications conveyed a very different account. Rose's Care Home's personnel acknowledged in several documents that the facility could not, and would not, do anything to create consistency between home and school. Rather, Rose's Care Home had accepted claimant because (a) that facility believed service agency would provide an educational consultant, (b) service agency would oversee "all institutions that would work with claimant," and (c) service agency or claimant's mother would be responsible for providing the facility with "a plan to achieve all this."

Service agency contradicted Rose's Care Home and told claimant's mother that no educational consultant would be provided but rather she could hire, and pay for one if she thought it necessary. Further evidence established Rose's Care Home could not meet claimant's needs because Rose's Care Home informed claimant's mother she should design claimant's program.

Rose's Care Home Behaviorist Consultant, Dr. Colon, appeared not to know who would be in charge of claimant's program. Dr. Colon advised claimant's mother that the program designed for claimant would be the responsibility of Rose's Care Home and service agency. And Dr. Grandison and claimant both understood that Dr. Colon viewed her role as merely supervising a plan's implementation. And claimant's mother heard Dr. Colon that the behaviorist would not have any contact with the Spectrum Center school.

According to Dr. Grandison's persuasive evidence, service agency also contradicted Dr. Colon, and refused to include oversight of a program design. Service agency's evidence showed that as a regional center it would not engage in the coordination of program design or implementation of a behaviorist's care of claimant. Rose's Care Home's owner also contradicted Dr. Colon's report to claimant's mother because the Level 4I group home's owner advised claimant's mother that the facility would not provide any program design for a behaviorist care of claimant.

*b. A provider's success in achieving the objectives set forth in the individualized program plan.* Dr. Piersel established Heartspring's multi-disciplinary approach, vocational programs, as well as its long history of treatment of autistic individuals with severe behavioral problems. Dr. Piersel showed that Heartspring clients have successfully reintegrated back into the communities for those impaired individuals. Service agency offered no competent, credible evidence to demonstrate Rose's Care Home has the capabilities of Heartspring or that Rose's Care Home can be reasonably foreseen as offering claimant an actual opportunity for success in overcoming his disorder.

*c. Where appropriate, the existence of licensing, accreditation, or professional certification.* Dr. Piersel demonstrated Heartspring has certified teachers in the classroom, licensed medical, nursing and psychological staff that are available around the clock and work together on a daily basis with para-professionals who receive weeks of initial training and then ongoing training and support.

Although Rose's Care Home meets minimal state licensing standards, such standards are not relevant to the treatment needs of claimant. For example, the licensure requirements submitted by service agency speak to levels of staffing, not what the staff will do, how they will do it, or who will oversee treatment. A "program design" for licensure means an organizational chart, statement of purpose, description of consumer serves, expected outcomes, entrance/exit criteria, staff functions/qualifications, sample schedule, and staff training plan such as the use of restraints. Rose's Care Home has inadequate critical features of a program design that is required for claimant to meet his goals. Service agency admitted that vendorization for Rose's Care Home was rushed through in order to provide a placement for claimant, and service agency could not show or describe the services and methodology, if any, Rose's Care Home represented it would use, pursuant to the licensure standards.

*d. The cost of providing services or supports of comparable quality by different providers, if available. Service agency failed to locate any provider within the State of California comparable to Heartspring's program of treatment, services and supports, both therapeutic and vocational.*

*e. The consumer's or, where appropriate, the parents, legal guardian or conservator of a consumer's choice of providers. After a lengthy, good faith effort to explore every possible option made available to serve her son's complex needs, claimant's mother chose Heartspring.*

*B. Treatment at Heartspring Meets the Statutory Criteria for Cost Effectiveness.*

6. Service agency's denial of claimant's treatment through Heartspring was in part due to the notion that the out-of-state facility may charge fees that will exceed the costs associated with the care contemplated through Rose's Care Home. But that notion is without regard to treatment needs, or whether claimant's best interests would be met at Heartspring versus Rose's Care Home. Also the notion that costs must dictate the determination of placement of a consumer in the proper and appropriate setting is unsupported by statute or regulation. Such a position defeats the intent of the Legislature to ensure that an individual program plan and the provision of service and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities. The individual-centered approach must take into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive and normal lives as well as stable and healthy environments.

Service agency's denial of placement at Heartspring is based upon service agency's misconstruction of the phrase "cost-effective use of public resources." Service agency seeks to define the term to mean service agency can only fund the less costly option available to the subject regional center. Service agency's theory is not consistent with the context in which the phrase appears in the Act, nor the regulatory definition and actual usage of the term by the Department of Developmental Services.

Welfare and Institutions Code section 4646, subdivision (a), in pertinent part states: "It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect cost-effective use of public resources."

Also the term "cost-effectiveness" appears in Welfare and Institutions Code section 4512, subdivision (a). That provision states, in pertinent part, in reference to which services and supports are to be provided: "The determination shall be made on the basis of the needs and preferences of the consumer or when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by the

individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.”

Service agency’s position that “cost-effectiveness” can only mean “least expensive” is unsupported by the statute and regulations governing the Department of Development Services. “Cost effective” is defined in the California Code of Regulations, title 17, section 58501 subdivision (a)(6), as “obtaining the optimum results for the expenditure.” The term “least expensive” or its equivalent<sup>16</sup> is not found in the Lanterman Act. Nor can it be found in any description of or mandate for an individualized program of service and supports appropriate to the needs of the consumer.

Welfare and Institutions Code section 4648, subdivision (a)(6), states, “The regional center and the consumer, or where appropriate his or her parents, legal guardian, (or) conservator . . . shall, pursuant to the individualized program plan, consider *all of the following when selecting a provider of consumer services and supports*:

- (A) A provider’s ability to deliver quality services or supports which can accomplish all or part of the consumer’s individualized program plan.
- (B) A provider’s success in achieving the objectives set forth in the individualized program plan.
- (C) Where appropriate, the existence of licensing, accreditation, or professional certification.
- (D) *The cost of providing services or supports of comparable quality by different providers, if available.*
- (E) The consumer’s or, where appropriate, the parents, legal guardian or conservator of a consumer’s choice of providers. Emphasis added.

A sampling of the actual usage of the term “cost-effectiveness”<sup>17</sup> by the Department of Developmental Services also fails to support service agency’s argument that claimant cannot be placed at Heartspring because the cost exceeds that of another option.

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<sup>16</sup> Welfare and Institutions Code section 4646, subdivisions (b) and (d) describing the IPP process, and Code sections 4512, subdivision (b) and 4646, subdivision (a)(2), in prescribing the mandate for services and supports to assist consumers to achieve and maintain independent, productive, normal lives utilizing individually *tailored flexible services and supports*, are helpful in this analysis. Welfare and Institutions Code section 4647, subdivision (a), requires that “the planning team considers *all appropriate options* for meeting each individual program plan objective; securing through purchasing or obtaining from generic agencies or other resources, services and supports (Emphasis added.)

In claimant's case, there is no evidence in the record to establish equivalency of services between Heartspring and the Rose's Care Home as they relate to Claimant's need for treatment. Welfare and Institutions Code section 4501 states that "The Legislature finds that the mere existence or the delivery of services and supports is, in itself, insufficient evidence of program effectiveness." The statute then mandates procedures whereby the regional centers "shall produce evidence" of the effectiveness of programs utilized for individuals with developmental disabilities. Service agency has produced no such evidence regarding Rose's Care Home.

The guide book to obtaining services under the Lanterman Act published by DDS crafted for consumer use adopts the only known regulatory definition of cost-effectiveness. At page 9, under the heading "The planning conference," the Department states: "Services and supports are expected to be effective in meeting the goals stated in the IPP, reflect the needs, preferences and choices of the consumer, and reflect the cost-effective use of public resources." It then cites footnote 24 California Code of Regulations, title 17, section 58501, subdivision (a)(6), and goes on to say "As defined in regulation, cost-effectiveness means obtaining the optimum results for the expenditure.

The statute, regulations and the Department equate cost effectiveness with services and supports that are expected to be effective in meeting the goals stated in the IPP, rather than forcing families to accept the least expensive service available, solely on the basis of cost.

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<sup>17</sup> Official notice (Gov. Code, § 11151) is taken of the Department of Developmental Services Consumer Fact Book, Initial Statement of Reasons for title 17 California Code of Regulations, and Department's Consumer Guidebook, as being examples of methods for the interpretation of the term "*cost-effectiveness*" and the term's application by the Department with regard to financial/rate issues affecting regional center consumers and their families.

The Department of Developmental Services Consumer Fact Book, Second Edition, at page 3, Goal 6, states under "Efficiency and Cost-Effectiveness" that "Services and supports for persons with developmental disabilities and their families will be provided in an efficient manner so as to be cost-effective for the State of California."

The Initial Statement of Reasons, in title 17 of the California Code of Regulations addresses rate adjustments for in-home respite services, at pages 2 and 3. The issue of cost when individual respite providers are hired directly at \$8.57, as opposed to families accessing respite through agencies who "recruit, train and place staff" at the "highest reimbursement rates ranging up to \$18.82 per hour..." The report goes on to analyze the need of families to obtain respite and to access services through agencies and states (at page 3, second paragraph): "While there is an issue of cost-effectiveness, the respite agencies still provide a quarter of the respite services, and they must remain a viable option in order to keep families together."

7. Heartspring, by its long established program and intensive use of resources, has committed to meet the standard of meaningful progress above claimant's current baselines in ways that were not shown to be other than cost-effective. Heartspring has developed services and supports identified as necessary to meet claimant's identified needs. Such treatment by the out-of-state facility would constitute the optimum results for the expenditure and meet the statutory and regulatory definition of cost effectiveness.

The issue of cost effectiveness is also relevant to the refusal of the Regional Center to acknowledge the crucial difference between treatment and care. No qualified expert, including Dr. Grandison or Dr. Piersel, was of the opinion that Rose's Care Home can provide treatment to address claimant's aberrant behaviors. How can funds be spent effectively if they cannot achieve the primary objective of this case, which is treatment?

*C. Service Agency's Financial Responsibility for Heartspring.*

8. Services agency unpersuasively argues that the school district is responsible for the costs of claimant's education at Heartspring. The evidence in the record, along with applicable statutes, case law and regulations, do not support service agency's theory that the school district is financially responsible for Heartspring.

*i. Law Defining Educational Placement.*

9. Service agency presents contradictory theories on the question of the school district's financial obligation regarding placement at Heartspring. It argues that claimant can be served within the state because Spectrum School, offered by the school district *after* Rose's Care Home was identified as a residential facility, can meet his educational and behavioral needs, but that the school district should be responsible for funding Heartspring because the School District *previously* failed to meet claimant's behavioral needs as stated in his IEP, and that it was claimant's mother's responsibility to sue the school district before asking service agency for such services and supports on the because this was an educational placement.

The latter theory is the basis for service agency's assertion that claimant failed to exhaust generic or other resources, which in this case would have been the school district. Service agency argues that pursuant to the Education Code's provisions that govern special education, if a family requesting placement at a therapeutic facility with an on-site school component, the family therefore would be requesting an educational placement, that under the Education Code the school district must fund. But service agency in advancing its argument fails to include the actual definition of educational placement and instead creates its own with labels such as "school" to describe Heartspring.

ii. *The Definition Of Educational Placement Has Not Been Met.*

10. Service agency's cites examples of witnesses using the term "education" or "school" as common parlance in reference to Heartspring. Service agency argues that the use by claimant's expert witnesses of those words makes Heartspring a school; and therefore claimant's placement would be an educational placement. But service agency's construction fails to satisfy the legal definition of the term "educational placement" as set forth in title 34, Code of Federal Regulations section 300.302. The federal law requires the residential fees of placement of a handicapped child must be paid by a school district as a "related service." This standard is met when an IEP team recommends said placement or the placement is necessary for the child to benefit from educational services. (Gov. Code, §7572.5.) The facts developed at the hearing simply do not exist in the present case as no IEP team has recommended

Heartspring and no witness or document established placement being made pursuant to an educational purpose. Rather claimant requires intensive behavior intervention through the unique treatment facilities and personnel at Heartspring.

iii. *The Program At Heartspring Is Not A Related Service For Which the School District Has Financial Responsibility.*

11. Although service agency cites the case of *Clovis United School District v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F. 2d 635), the regional center fails to acknowledge its own determination that establish claimant's needs must be met by an institution and program such as Heartspring; and that such treatment does *not* constitute an educational placement.

In *Clovis* a seriously disturbed child was hospitalized and received her education on site as part of her program. The defendants/parents alleged she was entitled to payment for her psychiatric care from a school district. The *Clovis* court held that the determinative issue is not "mere supportiveness," but "whether the placement was a response to medical, social or emotional problems quite apart from the learning process."

The *Clovis* court rejected the "continuum of care" argument that the consumer's medical needs included educational needs that could not be segregated from her need for treatment in a psychiatric institution. The court noted that the combination of medical and educational services would unfairly "mandate huge expenditures by local school boards" aimed at "curing" psychiatric illness. The unfairness in such an arrangement is evident when similar expenditures by a school district to educate children with physical ailments is not be required. The *Clovis* court explained the statutory prohibition of schools being responsible to pay for medical services. (*Clovis, supra*, 903 F. 2d at 644.)

Service agency uses the same disfavored “continuum of care” theory to argue the Pleasanton Unified School District is responsible for claimant’s placement at Heartspring because the consumer may receive some form of education where he to receive treatment for his maladaptive behaviors.

Analogous to the facts in claimant’s case, in *Clovis* the student had serious maladaptive behaviors that “rendered her not only unable to benefit from education, but, indeed, generally uncontrollable” behavior. At the hearing of this matter, witnesses and documents described claimant in similar terms. Dr. Grandison and Dr. Piersel described the program at Heartspring as very much like the one in *Clovis* wherein the student attended a “residential/therapeutic program coordinated with an on-grounds classroom program” with a variety of therapy programs “provided by various persons who met the state licensing or training requirements for hospital medical staff.” In *Clovis* the educational program was determined not by the school system but by a medical team with the “amount of time spent in the classroom determined by the hospital staff, and dependent upon her other treatment needs.” (*Id.* at 645.) The vocational training at Heartspring is dictated by psychologist and behaviorist with teachers following the health care providers’ directives.

Dr. Grandison’s report and testimony as well as the testimony of Dr. Piersel, established placement at Heartspring to be based upon the similar form of treatment needs and program as set forth in *Clovis*. Dr. Piersel convincingly showed claimant’s school hours and activities would flexible and determined by his therapeutic needs and behavioral progress. His school hours of up to six hours per day will be a small portion of the 24 hour program that he will receive from licensed professionals including psychologists, physicians, nurses and teachers who will create a program designed by them, not by the PUSD, to address his behavioral and communication needs due to Autism, not any educational deficits.

Rejecting the position that such an arrangement was an educational placement for which the school district was responsible, the *Clovis* court found that the intensity of that program indicated the program focused on treating the underlying medical crisis; “medical” being the term used to describe her six hours a day of intensive psychotherapy. (*Id.* at 645.) As such, the school district in *Clovis* was not financially responsible for the girl’s treatment even though her education was integrated into the program.

Service agency is not exempt from the statutory definition of what constitutes an educational placement. If service agency were correct, upon the statement of a family or doctor that a placement was necessary, provision of a list the possible services for their child’s needs, and use the words “education” or “school” to describe the program or facility, the school district would, without further consideration or input, be financially obligated for funding because it would be an “educational placement.” There is a presumption that the Legislature did not intend absurd results. (*In re Head*, (1986) 42 Cal.3d 223, 232.)



Service agency's position would also result in a policy of withholding services and supports for every such school age consumer until the parents have completed lengthy, costly and futile litigation. Such civil lawsuit would require the family to demand the school district to capitulate to service agency's above-stated definition of educational placement, and then lose, before service agency would provide services. There is no support in the Lanterman Act for such a scheme.

Service agency also cites *Ojai Unified School District v. Jackson* (9th Cir. 1993) 4 F.3d 1467 in support of its argument. In that case, after seven years of schooling, a blind-deaf student had not achieved basic signing nor self-help skills. The court, at p. 1478, cites *Clovis* for the holding that residential schools are within the scope of the IDEA and include elementary and secondary schools. Service agency cites *Ojai* for the proposition that the school district should be responsible for claimant's educational fees, without acknowledging that the *Ojai* decision did not alter the above-stated findings in *Clovis*, applicable to claimant.

*iv. Service agency's Use Of Labels Are Not Dispositive Of This Controversy*

12. Service agency argued that if the term "educational" or "school" is used to describe Heartspring, that Kansas facility must be an educational institution. Therefore placement at Heartspring constitutes an "educational placement" for which the school district is responsible for the educational fees.

Service agency's selective use of terminology ignores the evidence developed at the hearing that renders the regional center's distinction meaningless. Heartspring is referred to as a "Worldwide Center for Children With Special Needs." It is characterized as an "educational/therapeutic residential placement where behavioral management is available and applied 24 hours per day, seven days per week."

Citing the intensive program of psychotherapy focused on treating a primary disability that was medical, i.e. psychiatric, and provided at a "hospital" facility, the *Clovis* Court admonished against the use of rigid word usage or labels, as service agency has done, to obtain the preferred outcome. The *Clovis* court stated:

We note that there is nothing magical about the appellation 'hospital' in our analysis. There are many public institutions around the nation that are called 'state hospitals' that are in fact primary residential treatment facilities where the educational, social, and developmental training needs of severely handicapped individuals are met. For example, in California the legislature has established eight "State Hospitals for the Developmentally Disabled." (See Cal. Wel. & Inst. Code § 7500.) These institutions are not primarily medical hospitals but are more like residential treatment centers where an individual's multiple and intertwined needs can be met. The object of these "hospitals" is the care, treatment, habilitation, training, and education" of the persons committed thereto, Cal. Wel. & Inst. Code § 7503, and may well qualify under state law, as residential placements with which school districts may contract under the Act." *Id.* at 646.

*Undisputed Documents Of Record Establish Heartspring Is Not An Educational Placement.*

13. Service agency's own documents acknowledge that the intensity of claimant's treatment needs are not educational nor due to the failure to learn, as in *Ojai*. Rather claimant requires a therapeutic environment to treat his underlying extreme maladaptive behaviors. Such therapy is not the responsibility of the school district under *Clovis*. Some of the documents in evidence establish that behavioral issues, and not educational matters, as claimant's primary need are as follows:

A. On April 8, 2010, service agency advised the Regional Project of its belief that "Josh greatly improved behaviors within the classroom at Spectrum center (sic) and was brought back to a public school campus at Amador Valley high School (sic). Josh was provided with an instructional aide and *was making great academic gains*. The transition back to the high school campus was seen as a success." (Emphasis added.)

B. Service agency, in its statewide placement request, acknowledged that placement was not to improve or address claimant's education when it stated, "[m]other is requesting a residential *placement in a treatment-based facility to reduce and eradicate SIB's*." (Emphasis added.)

C. Service agency's updated IPP on October 27, 2009 did not indicate a failure to meet academic needs. Service agency addressed only behavioral issues, stating:

Educational/Vocational/Programming: claimant attends 12th grade at Amador High School . . . . [Claimant] has a *1-to-1 aide off and on during his school day due to his behaviors*. [Claimant's mother] is concerned about the consistency at which [claimant's] school staff is keeping track of [claimant's] medicine and has not yet received any evidence that they are logging when he takes his medication and the increase of decrease of targeted behaviors." (Emphasis added.) Again, the issues were not whether there was an appropriate academic placement; [claimant's] mother found fault with the school tracking medications for behaviors, not curriculum. (Emphasis added.)

D. The services of Ms. Wasano, which the service agency funded when claimant could not return to school, were based wholly upon the need to address behaviors, not educational deficits. [Claimant] was on "*home instruction with constant behavior support through BIA*." Ms. Wasano also stated, "[Claimant's] engagement in aberrant behaviors (i.e. tantrums, aggression, self-injurious behavior in the form of head hitting and yelling) had markedly increased over the past few months." The behavior analyst noted her collaborative effort to create a modified Positive Behavior Support Plan (PBS), attached to her report and that "[claimant] receives support from after school tutors that assist in managing behaviors, working on leisure, daily living and community skills."

Frustration management skills were also part of his program. The June 22, 2010, report of Ms. Wasano indicated the same needs for curriculum that did *not* involve teaching strategies for academic skills but for aberrant behaviors.  
(Emphasis added.)

E. Claimant's mother requested the school district and service agency fund Heartspring because "this facility can offer both reactive and preventative interventions, while offering him access to the same resource curriculum he had in his previous placement at Amador High School, i.e. Algebra and cooking."

F. The Assistant Director of Spectrum School is quoted as saying "[Claimant] is a very intelligent student with great mathematical skills" and in 2007, prior to his behaviors becoming so severe, school district was "contemplating the possibility of having claimant enrolled in a pre-vocational setting by the end of the following year." (The pre-vocational program enrollment never occurred due to claimant's maladaptive behaviors, not because the school district lacked a program.)

G. Claimant's 2008 IPP acknowledged that the issue was not claimant's educational program stating, "Consistent communication and program coordination between the residence and school is essential to provide [claimant] with clear expectations and consequences of behaviors and the opportunity to carry over learning from the school to the residential environment in the areas of functional communication and self-reliance . . . ." This same IPP describes claimant's problems at school being behavioral such as eloping from the classroom, property destruction and pica. Service agency used labels to bolster its claim that Heartspring is an educational placement, by selectively citing the term "educational therapeutic" as found in Dr. Grandison's report. Service agency further cites Dr. Grandison's discussion of the program and resources at Heartspring out of context.

Contrary to service agency's argument, the context in which Dr. Grandison uses the term is unambiguous. Claimant's expert witness, who is a clinical psychologist, stated: "*Claimant's educational and therapeutic needs are tremendous and need to be addressed in a comprehensive and intensive way in order for his behavior to be brought under control, and in order for him to learn academic/vocational/independent living skills to the degree possible. In this examiner's opinion, [claimant] needs an educational/therapeutic residential placement where behavioral management is available and applied 24 hours per day, seven days per week . . . . In addition to behavior management, claimant has a great need for communication support, academic support, as well as vocational training.*"  
(Emphasis added.)

Dr. Grandison also addresses her findings regarding claimant's previously misunderstood intellectual capacity, and how that capacity impacts his education. Dr. Grandison expansively refers to Heartspring *not* as an educational institution, but rather as a "24/7 therapeutic environment where all staff is trained, where the environment is

structured, and where the majority of the students have autism to a significant degree.” (Emphasis added.)

Nowhere does Dr. Grandison state an opinion that claimant should attend Heartspring because it is an educational institution and that his current difficulties are due to deficits in his education. Dr. Grandison did not assess (or criticize) Spectrum’s curriculum. In fact Dr. Grandison stated Spectrum was a school that she had recommended for other clients, including those with Autism, but that it’s lack of structure and intensive behavioral program would not serve claimant’s current needs.

In addition to the above-cited documents from service agency that omitted any reference to claimant entering Heartspring for educational services, Dr. Grandison’s report was in claimant’s file for almost six months prior to the hearing. Not a single service agency witnesses testified to a belief that this placement was due to educational needs.

*C. Service agency Improperly Alleges Placement at Hearstspring is Prohibited by Law and/or Too Restrictive an Environment*

14. Service agency also states that Heartspring is a more restrictive environment than Rose’s Care Home because it has 50 beds disbursed among a half dozen care homes. In support of that proposition, service agency cites Code section 4648, subdivision (a)(9)(B); which constitutes a prohibition against the purchase of “residential services from a State Department of Social Services licensed 24-hour residential care facility with a licensed capacity of 16 or more beds.” It then cites language that larger facilities need present a plan to downsize to 15 beds or less by 2012.

Service agency offered no evidence to establish the relevance or applicability of the above-cited Code section 4648, subdivision (a)(9)(B). Moreover, the evidence at the hearing showed that Heartspring has several building on its property and that in no building do more than eight young people reside along with, at least, two staff persons in residence.

*D. No Evidence Establishes Heartspring Is Too Restrictive Of A Setting.*

15. The evidence in the record establishes that the sole mention of the number of beds as an issue arose from the testimony of Mr. Rodriguez who indicated he formed his opinion by viewing a picture of Heartspring on the internet and reading its website. He opined that claimant also should not go there because he would not have neighbors. Claimant currently lives at home where he has neighbors and, according to the testimony of claimant’s mother and service agency’s own documents, his proximity to neighbors has resulted in warnings of eviction, threats to call the police, and chains on the front door due to his impulsivity, elopement and property destruction. On cross-examination Mr. Rodriguez acknowledged that claimant would receive treatment for these behaviors at Heartspring and that even if Heartspring is not situated in a regular neighborhood,

claimant is going to Heartspring for treatment, not to be placed there for the rest of his life.

Moreover, no witness, including Mr. Rodriguez, testified to any fact which establishes Heartspring, because it has more than 15 beds, is akin to a large developmental center/state hospital (the most restrictive setting available) where consumers are denied their rights, under the Lanterman Act, to services, supports and a home environment, which closely approximates that of their non-disabled peers. Rather, Heartspring provides the highest level of treatment in a campus environment, like those of non-disabled peers who attend boarding schools or colleges, with education, vocational training, work opportunities, community integration, and transitional housing when claimant would be ready to return to his home community.

#### *E. Funding*

16. Service agency also cites Welfare and Institutions Code section 4848, subdivision (a)(8) for the proposition that it is prohibited from funding of Heartspring and that the school district must provide said funds, because it cannot “supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

No witness testified to this issue to establish the cited statute is dispositive of this case. At the hearing, service agency did not deny placement on this issue. And service agency cites no authority that the statute erects a blanket prohibition against placement at Heartspring.

As there is no competent evidence to establish that there is any obligation by the school district to fund Heartspring since it is not an educational placement and, as set forth in *Clovis United School District v. California Office of Administrative Hearings*, *supra*, 903 F2d 635, the school district is not an agency with a legal responsibility to provide non-educational treatment services, service agency fails to establish the applicability of Code section 4848, subdivision (a)(8). The evidence established Heartspring is a non-public institution specializing in the treatment of individuals with autism. There is no evidence or authority that the School District has an obligation to serve claimant at Heartspring in order for him to receive treatment for his maladaptive behaviors.

Service agency’s argument defeats all of the above-cited sections of the Lanterman Act which mandate service agency to provide services and supports including those which will allow him to function at school, pursue generic services such as the School District if it believes funds are owed, provide out-of state services, work with other agencies, prevent gaps in services, etc.

Service agency tries to establish precedent for this case by improperly citing administrative decisions, which have no such authority or relevance for this case. Educational placement is not determined by the name of the institution or whether there was a good faith effort for the school to be supportive of claimant’s needs, but by the

program and needs of claimant, as determined in *Clovis United School District v. California Office of Administrative Hearings, surpa.*. As set forth hereinabove, since service agency and all witnesses have repeatedly acknowledged claimant's primary disability is his aberrant behaviors, not a failure to learn academic skills, his treatment at Heartspring is not an educational placement. Claimant's mother was confident that claimant could receive the same educational curriculum at Heartspring as was used at Amador High School. There is no educational program dispute to litigate. However, if service agency is of a different opinion, it has the right to pursue the School District as a generic resource.

*F. As a Remedial Statute, the Lanterman Act must be Liberally Construed in Order to Effectuate its Purpose.*

17. Statutes such as the Lanterman Act are intended to provide beneficial services and remedies to persons or classes who require protection from harm or exploitation and thus fit the category of "remedial" statutes. (*Wilson v. Superior Court*, (1935) 2 Cal. 2d 632, 637; *Lande v. Jurisich*, (1943) 59 Cal. App. 2d 613, 617.) It is established law that remedial statutes are to be interpreted broadly to effectuate the purposes for which they were enacted. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal. App. 3d 340, 347; *People v. Merrill* (1914) 24 Cal. App. 206, 210 (1914).) The Lanterman Act, by its acceptance of its obligation to persons with developmental disabilities, clearly intends to remedy harm caused by lack of treatment and services. (Welf. & Inst. Code, § 4501.)

Because the severity of claimant's maladaptive, aberrant behaviors is undisputed, so must the need for a treatment program that can address these behaviors. There is no evidence other than that presented by claimant that treatment must include intensive treatment with consistency between home and school. The testimony of Dr. Piersel, Dr. Grandison, claimant's mother, and Ms. Wasano all established that Rose's Care Home (or any care home) could not provide either treatment or consistency between home and school.

Each witness, including those testifying for service agency, established that no Rose's Care Home staff person, or any regional center personnel, could tell the school district or a classroom teacher what to do, or what methodology to use while claimant is receiving his education. No teacher would be available outside of the school day to review data collected in the home, and consult regularly with other professionals outside of the school during non-school hours.

As stated by Drs. Grandison and Colon, the Rose's Care Home, as nice a place as it may be, can merely provide *care*; that is meals, a bed and staff to be with claimant and prompt him throughout the day when his maladaptive behaviors are not taking over his life, threatening his own safety and that of others around him.

Without acknowledging the difference between care and treatment, service agency defeats the mandates of the Lanterman Act that claimant receive treatment appropriate to his needs. (*Jones v. Heckler* (9th Cir., 1985)760 F.2d 993, 995).

Thus, the liberal interpretation of the Act to effectuate its remedial nature cannot be accomplished by denying placement at Heartspring solely on the basis that a less costly bed exists in a local group home, when it has been shown that said facility lacks any capacity to address the issues which caused claimant's mother to seek out-of-home treatment in the first place.

*G. Ultimate Determination*

18. Because the only placement located within the state had no program of treatment for claimant appropriate to his needs, as determined by the Lanterman Act, placement of claimant at Heartspring for appropriate treatment is required.

**ORDER**

1. The denial of services by Regional Center of the East Bay is reversed.

2. Claimant Joshua K.'s appeal from the determination by Regional Center of the East Bay is granted. Regional Center of the East Bay is required to provide services and supports to claimant Joshua K. pursuant to the Lanterman Developmental Disabilities Services Act, by funding claimant Joshua K.'s enrollment, transportation, accommodation in the residential treatment center known as Heartspring at its campus in Wichita, Kansas.

DATED: April 20, 2011

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PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

**NOTICE:**

**This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (b)(2). Each party is bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**